

no Laici Ecclesia Anglicana infra  
dictionem Archidiaconatus S. Albani.  
22<sup>o</sup> Januarij 1761.

To The Rev. Dr. Jebbston  
Archidiacon of S. Alban's



Ultimo Octobr. 1660.

**P**ERlegi Libellum, cui Titulus [*An Hi-  
storicall Discourse, Briefly setting forth the  
nature of Procurations, &c. By Jo. Stephens*]  
quem fieri publicum non indignum cen-  
seo. Imprimatur modò intra tres menses.

ROBERTUS PORY S. T. P. Reverendissimo  
in Christo Patri ac Domino D. Archiepiscopo  
Cant. Sacellanus Domesticus.



J[ohn] S[tephens]

15 v 14 c  
(110, 146, 6) 8

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A N  
Historical Discourse,  
Briefly setting forth the nature of  
PROCURATIONS,  
And how they were antiently paid,  
with the reason of their payment;  
And somewhat also of  
SYNODALS  
And  
PENTECOSTALS:  
With an APPENDIX in Answer to  
an Opposer.

By J. S. ~~Stephens~~ Stephens

Πᾶς ζητούμενον ἐρετὸν, ἀφ' ὧν ὁ ἀμολόμενος.

LONDON,

Printed for the Author, and are to be sold by John Baker at the  
Peacock in St Pauls Churchyard. 1661.

*H. New*

V A

# Historical Dictionary

Briefly tracing the nature of

PROCURATIONS

And how they were anciently paid

with the view of their payment

and the former state of

SYNOADS

And

RENTS

With an Appendix in Answer to

an Objection

1712

The Original of this, &c. &c.

LONDON

Printed by J. Sturges, and sold by J. Sturges, at the Sign of the Crown, in St. Pauls Church-yard, 1712.

REVERENDISSIMO

in Christo Patri, ac Domino D.

GULIELMO <sup>uxor</sup> Providentia divina

Cantuariensi Archiepiscopo totius

Angliæ Primati, & Metropolitano.

REVERENDISSIMO etiam in

Christo Patri, ac Domino D. ACCEPTO <sup>Frewen</sup>

eadem providentia Eboracensi Archie-

piscopo, Angliæ quoque Primati, &

Metropolitano.

Nec non

Admodum Reverendis in Christo Pa-

tribus ac Dominis D. GILBERTO <sup>naiden</sup> divina

etiam providentia Episcopo Londinensi, &

D. BRIANO <sup>Suppa</sup> Episcopo Wintoniensi: Cate-

risque Reverendis Episcopis, & Prasulibus

utriusque Provincia in Ecclesiâ Ang-

licana constitutis.



Nnus præterit vigesimus

(Reverendissimi & Re-

verendi Patres) ex quo

Tractatum hunc Histo-

a 3

ricum

*Epistula Dedicatoria.*

ricum de Procurationibus Synodali-  
bus & Pentecostalibus in Usus  
publicum composui: sed priusquam  
ederetur Procellâ appropinquante  
manum ab editione retrahere  
cogēbar, & chartulas abdere a Pla-  
giario quī in sequente Tempestate  
apertâ fronte grassabatur. Sub spe  
tamen fore tempus, ut hæ meditati-  
ones qualescunque (si *σπέρματα* non ob-  
starent) in lucem emitterentur. Et  
nunc tandem foràs exituræ Patro-  
cinium vestrum. Honorabile (vigi-  
lantissimi *Navarchi* qui ad Cla-  
vum Ecclesiæ sedetis) humiliter im-  
plorant. Dentem invidiæ non re-  
formido (tenuitati non invidetur,  
sed sublimitati) Contemptus est  
quem potius vercor a quo sub um-  
braculo tantæ authoritatis & emi-  
nentiæ,

*Epistola Dedicatoria*

mentia, velut sub *Ægide Minervæ*  
(veniâ submisſe petita) me recipio,  
& abscondo. Orta fuere annis ante-  
actis diſſidia quàm plurima, Lites e-  
tiam & velitationes de tempore in  
tempus non pauca inter Archidia-  
conos *Glouc.* & Clerum ibidem de  
Reſolutionis Procurationũ & Cen-  
ſuum Eccleſiaſticorum; Ad quas  
componendas, & ne Eccleſia quic-  
quam detrimenti caperet, ne etiam  
flamma diſſentionis inter Eccleſiaſti-  
cos de integro exurgeret aut erum-  
peret: Ego met ipſe inter mille mi-  
nimus lubens ſurrexi. Et quid in  
his conatibus meis præſtiterim in  
medio reliqui a peritioribus penſi-  
tandum.

*Eſt quadam prodire tenus ſi non da-  
tur ultra.*

*D. Opt.*

*Epistola Dedicatoria.*

*D. Opt. Max.* qui potest rependat  
vobis quicquid a me rependi non  
potest; Et benedictiones in sinus ve-  
stros amplissimos magis magisque  
cumulatissime refundat. Faxit in-  
super, ut peracto hujus vitæ curri-  
culo, a terrenis ad sedes sempiternas  
inter Cœlites post seros annos feli-  
citer transferamini. Et hæc, ex inti-  
mis intimis ipsius votis qui est.

*Paternitatum vestrarum*

*Servulus humillimus*

*Jo. Stephens.*

*To*





To the Candid and ingenucus

R E A D E R



With little encouragement to undertake, and less abilities to perform a task of this nature; I have out of my respect to the Clergie (whose calling I much honour) adventured to run the hazard of a Censure. But as he that observeth the Wind shall Eccles. 11. not sow, as the Wise man speaks; And as he that feareth oblation must not travel, as all men know: So must he resolve to cast away his pen that will not resolve *ἄποδοῦν* (to use

A

St.

*Ἀποδοῦναι  
τὸν λόγον*  
Act. 27. 15.

## The Epistle.

St. Lukes Metaphor in another sense) to bear up against the Wind of detraction. Thus much I can truly say, that Peace disturbed, only that, (my self being therein sometime a Patient) hath set me now on work, and made me here an Agent, endeavouring by the discovery of an erroneous cause (the ground of such disturbance) to remove for the future (as much as in me lieth) a very ill effect arising thence. And albeit the light be dim, that forceth it self thorough a cloud of such imperfections, as I must needs acknowledge: yet is the Greek Proverb true (and I apply it only to the unstudied in the present argument) *Κεῖσσαν δὲ λυγρὴν ὥσπερ ἐν πυρρῇ σκοτεινῇ.* Better a little light, though but a very little, then none at all, better then to be altogether in darkness. For my part  
what



# to the READER.

what I have received I freely communicate : the greater burdens I leave to the greater bottoms. All that this little Tractate hath to pride it self in (were it lawfull for it to boast) is that it is <sup>not an innovation but,</sup> a Act. 17. 21. Novelty. Which being so, it may haply take an Athenian eare (so much in former times delighted with news, as the Greek Orator observes, and after him St. Paul;) yea an English one too, if it be with the English now as it was in Gildas his time. *Patria mea novi semper aliquid audire volens,* &c. saith he. But what it is, how and with whom it will take, I have not to say. This only I know, that it hath proved (weak as it is) to my dull apprehension, the issue of more than ordinary labour, some part of it, there

A 2 being

Demosthen.  
 ἡ δὲ φιλονεικία  
 τοῦδε οὐκ ἔστιν.  
 Epist.

## The Epistle, &c.

*being none de cujus lumine, lumen  
accenderem meum; None, whose  
footsteps I could find (though I thirst-  
ing sought) to follow in so unfrequent-  
ed a desert as I wandered through.*

Virgil.  
Georg. 13.

— — — — — quæ nulla priorum,  
Castaliæ molli divertitur or-  
bita clivo.

*In a word, what I have here done,  
my thoughts have wrought within me  
this persuasion, that the same by the  
ingenuous Reader will be taken in good  
part. For the vulgar and unknowing  
persons (who are least able to judge,  
but most apt to censure) I fear not  
their Arrows.*

J. S.

De



## De Procurationibus.

**D**OCUTUM fuisse penituit aliquando, fuisse nunquam; said one, and truly, it being referred to unreasonable and inconsiderate speaking; else the Wise-man Salomon will teach us another Lesson, That as there is a time to be silent, so is there also a time to speake; and whosoever shall spare either Tongue or Pen, when in probability he may doe good, omits a necessary duty, and doubtless incurs deserved blame. How neerly this Case did once reflect upon my self, they

A

best

*Simonidis dictum apud Plutarch. de tuenda Valetud.*

*Eccles. 3. 7.*

## De Procuracionibus.

best know, whose opposition to payments (just as I conceive) hath stirred me up to strive <sup>non desistens</sup> (as they wont to say) to the uttermost of my power, as well to give them satisfaction that pay, as to procure ease to those that receive. An opinion hath of long time possessed some of the Clergy, That *Procurations* are only due *Ratione visitationis*, and that without respect unto such Act of *Visiting*, no demand, of that nature, can be in Conscience warranted or payment by Law enforced, and therefore Arch-deacons to be excluded in the years of Episcopall Visitations: Upon this mistaken ground (for so I take it) suits have formerly been commenced, and much time and money spent, and yet the point remains unsatisfied, the Clergy (most of them) paying this due (whilest the same was payable) to the Arch-deacon (especially in the Lordbishops *Triennials*) with a kind of reluctance, *mixta voluntate*, as I may say, and many desiring <sup>non tam libenter</sup> a time to deliberate. The truth is, and I finde it so, that

That payments, how necessary and just so ever, yet are they not at all times pleasing to those upon whose shoulders they lie; they being of such a nature as to the nature of man is *unpleasing*, to wit, *burthen-some*, mainly opposing the principall object of the natural desire, namely *Ease* and *Liberty*. They are in the Law called *Onera*; and by so much the more *Onerosa* burdenous and unpleasing they are, by how much the more the reason to evidence the true ground and originall cause of them is unknown to some that pay. To lighten therefore this Load, what I may, and for the ease of such as being pressed with the burden of their Ministerial functions, and Ecclesiasticall employments; their thoughts busied and their Studies taken up and conversant in the Sphere of higher speculations) have not leisure to look into things that move in a more inferiour Orb: I have put my self forward (but to speak truth *actus egi*) to search into the nature of some of those Church-payments, and dues Ecclesiastical,

Πάντα τὰ ἀνάγκη  
καὶ τὸν Χριστὸν ἀντι-  
μετῶν ἐστὶν  
Theogn. sent.

*Euripid. in Hec-  
traclid. pa. 187.*

call, namely *Procurations*, *Synodals*, and *Pentecostals*, and have endeavored to find and discover the true reason of their pay, begun so long agoe in the Church, and continued to this day; which how far forth I have performed in this little Tract I leave to the judgement of the judicious Reader; reflecting upon my selfe, and seriously wishing in this particular taske, what the servant in *Euripides* wished to old *Iolans*. (*ὅς ἦν δαυρις ἀπὸ τῶν ἰσθμίων*) saith hee:) that I also were as able to perform, as I have been willing to undertake the same; however I proceed, and begin with *Procurations*. In the handling of which point I shall necessarily fall upon the severall enquiries following, namely, First

1. *What a Procuration is, Whence so called, And how, And in what manner it was antiently paid?*
2. *Whether due ratione Visitationis?*
3. *Whether only, so due, and no otherwise?*

Concerning the first, we have two things



## De Procuratoriis.

things to consider of, to wit, the *quid nominis*, and the *quid rei*. For the *quid nominis*, I have not found much written, somewhat I have; That the word hath its derivation a *Procurando*, there is no doubt of that, but procuring what, there is the *rd* *Interrogat.*

Whether it should be for procuring the *Visitor* to come to each particular Church in his own person, and to Visit *Ecclesiasticam*, *per omnes Dioceses parochiasq; suas*, which was the ancient custome; Or from procuring of him to come to a certain place in severall Divisions or Deaneries, where the Clergy within the said distinct Deaneries were to give meeting, as now they doe, they being overcharged with his coming home to them; each man may please himselfe with his own opinion? For my part, I cannot satisfie my self with either of them. My reason against the former is; *Visitation* is a principall duty that belongs unto every Bishop (derived from the Apostles, who were Visitors, and did *pertransire Ecclesias & Urbes*) it sticks in his very name *innot.* which comes from a

10. 7. 1. c. E-  
pi'scopum. E.  
concil. roletan.  
4. ca. 35.

A. 15.  
Act. 16.

\* So also from  
 ἵνα το ὡς ἵνα  
 mes ἵνα, a Bi-  
 shop,

*Episcopus debet  
 visitare singulis  
 annis Parochi-  
 am, nisi dimi-  
 tat propter gra-  
 vamen Ecclesia-  
 rii, & tunc mi-  
 rat Archidia-  
 conum, &c. Ab.  
 Sic. super 2. 1.  
 de Offic. Ar-  
 chid. c. ut Ar-  
 chidiaconus. 10.  
 q. 1. c. Decreti-  
 mus & Epif-  
 copum.  
 2 Coke. 15.  
 D. Spelman.  
 Concil. pa. 238.*

*Exr. de Censibus  
 c. Cum Apollolus  
 &c. Fæ icis re-  
 cordationis eod.  
 in 6.*

word that signifies to Visit *invisitationis*, and is frequently used in that sense, not only in the Scripture, but also by Ecclesiasticall and Prophane Authors, obvious every where to be met withall. Now to procure the Visitor by way of stipulation and contract, to doe that which by his calling and place, either in his own person, or by others (himself being hindred) he ought to doe, is a plain *anomaly*, and stands with no reason or congruity, if I may judge.

And as weakly built ( if I mistake not) is the other opinion, to wit, That *Procurations* should have their denomination from pocuring the Visitor to come to a certain place in every Deanery or Division, whereas it is evidently manifest, that the word *Procuracion* was then used when the Visitor visited *Ecclesiastim*, as may be seen in divers Chapters in the Canon-Law.

Another reason then is to be sought for to give the word its true genuine interpretation, as it relates to the present busi-  
 nesse ;



ness, and that is, not from procuring the Visitor by way of contract to come; no, but from procuring of victuals for him and his attendants, when they come in Visitation. Thus it was, and this indeed comes neer unto the nature of the word *Procurare*, (which among other significations it hath) signifieth to nourish, and to make provision in diet for; *Hoc autem munus ideo Procuratio vocatur quia Ecclesie Episcopum Procurant, id est Curant, alunt ac tuentur; sicut pueri dicuntur Procurari a Nutricibus & equus a Domino apud Plautum & alios Authores Latinos qui propriè & emendatè locuti sunt.* Thus Duarenus: But here now comes a Cloud in our way that must be a little cleer'd before I goe farther, lest I should hold the Reader (the Reader I say unversed in this study) too long in a mist of suspense. An objection may be made thus. Were victuals antiently the Visitors pay, for and in respect of Visitation? why then doth the second Councell, held at Bracar, above a thousand yeares agoe, and the seventh Councell held at Toledo in

Duaren. de saceris, Eccl. Minister. & Benefic. l. 7. c. 5.

Concil. Bracar. 11. Can. 2.  
Concil. Toletanum 7. Can. 3.

Spayn

10. q. 3. ca.  
inter cetera ubi  
glossa in casu.

Spain, a little after, expressly forbid by their Canons, That no Bishop *per suam Dioecesim ambulans*, should receive ought from the several Churches within his Dioces, *Præter honorem Cathedræ suæ*, that is to say, two shillings; To this I answer, out of the Glosse upon the Decree where the Canon of the seventh Councell at Toledo is recited. The Case there is This. The Bishops of the Province of Gallicia, when they visited their Diocesses, hardly pressed upon their visited Clergy: Bringing with them a great Train of attendants (*100 vel 200 Equitaturas*) and exacting from them not only, *ultra duos solidos pro Cathedralico*, but also costly provision in *esculentis & poculentis*; upon complaint made of this grievance the Councell decrees a moderation in the money receipts (*Ne ultra duos solidos exigant pro Cathedralico*) and for the number of Attendants they are reduced to fifty at the most, and the time of their stay at each Church limited to one day, and no more; So that this Canon is no bar at all to our *Procuracion* payment in money now, 'tis I dare

dare boldly say a meer *deus ordinis*, a very nothing to that purpose : For it was many years after this time that money had warrant to pass for visitation Procurations, as I shall hereafter, God assisting, make evident : so that the Objection being answered, and the *Quid nominis* in some sort explained, I proceed to enquire, desirous more exactly to know what a Procuracion is in the *Quid rei*. And to this enquiry *Vallensis* makes answer, and tells us that it is *Necessariorum sumptuum exhibitio que ratione Visitationis debetur ab Ecclesia, vel Monasterio ei cui ex officio incumbit ius & onus Visitandi, sive is sit Episcopus, sive Archidiaconus, sive Decanus, sive Legatus summi Pontificis.* Thus *Vallensis* ; and well for the ground of this Procuracion due, but not fully enough for the growth thereof, there being now other reasons not included within the circumference of this description, that inforce the payment of Procuracions without visitation, as I shall in the prosecution of this discourse (I doubt not) make appear. Wherein for further expli-

*Vallens. Paratit. de censibus, §. 3.*

## De Procuracionibus.

cation of *Vallensis* his description, I shall be bold to assert that the *Quid rei* of visitation Procurations in ancient time, this *exhibitio necessariorum sumptuum* was victuals. In the Councell of *Lateran* (I doe not mean the great General Councel under *Innocent* the Third, but that other under *Alexander* the Third, somewhat above 30. years before, and about the year of our Lord 1180.) Visitors are directed so to proceed in the dispatch & execution of their Visitations as those that minded not their own things, *sed que Jesu Christi*. And it follows there, *Nec sumptuosas epulas querant, sed cum gratiarum actione recipient quod honeste ac competenter illis fuerit ministratum*. Thus there: so in the *Sext* there is a constitution made by *Innocent* the 4. (who came in Pope, Anno 1243.) and ratified afterwards by a General Councel held at *Lions* in the time of *Gregory* the Tenth, about the year 1273. peremptorily; (yea *sub pena maledictionis eterne*) forbidding the receipt of money in lieu of Procurations (*vel a volentibus sic solvere*) adding moreover, that

Ext. de Const.  
bus c. Cum A-  
postolor.

c. 1. 6. Procu-  
rationes, & c.  
exigit. eod. in 60.  
& ibi Glossa in  
ca. 4.

that if any Visitor should presume to receive them in such sort, and otherwise then in viſuals : *Duplum ejus quod receperit Ecclesie a qua id receptum fuerit infra mensem reddere tenebatur*, which if accordingly (being Patriarch, Archbishop, or Bishop) he failed to restore, he was forthwith liable to an Interdiction, *ab ingressu Ecclesie* : But for Visitors of inferiour ranck, suspension *ab officio & beneficio* was their penalty in this case. This then was the ancient manner of paying Procurations till the time of Boniface the Eighth, who succeeding in the Popedom about twenty two years after the death of Gregory, and finding *multa incommodorum dispendia*, many inconveniencies in the Constitutions of his predecessor touching this particular, did himself make a Constitution about the year 1295. that it should be lawfull to any Visitor whatsoever *volentibus visitatis*, and not otherwise, to receive in lieu of viſuals money (not to exact it) towards the defraying of their visitation charge. The Constitution runs thus, *Quoniam rerum ex-*

Gloss. in ver.  
dispendia c.  
Facilis recov-  
dationis eod.  
in 6<sup>o</sup>.



## De Procurationibus.

C. Faciendū re-  
corat ubi  
supra in 6.

perientia nos instruxit ex hoc tam personis visi-  
tantibus quam locis & Ecclesiis visitatis multa in-  
commodorum dispendia provenire. Concedimus ut  
Patriarchæ, Archiepiscopi, & alii quibus ex offi-  
cio competit visitare a consentibus Ecclesiarum &  
locorum Visitorum Rectoribus, seu personis pec-  
cuniam licite recipere valeant pro sumptibus mode-  
ratia faciendis in victualibus diebus quibus visi-  
tationis officium personaliter exercebunt. Now  
the reason of the making of this constitu-  
tion was out of question this, namely in  
respect of the great charge that the visi-  
ted Clergie were put unto in giving enter-  
tainment to the Visitors in those times,  
who in their visitations came attended  
with a troupe of men and horses so exces-  
sively great, *Ut interdum Ecclesiastica orna-  
menta subditi exponere compellebantur.* The  
poor Clergi were ofte times constrained to  
sell even their Church ornaments to make  
provision for them, as it was declared o-  
penly in the aforesaid Council of Larenans.  
And thereupon in that Councell all Visi-  
tors came to be stinted to a certain num-  
ber of Visitation Attendants, according to  
their

Exi. de censibus  
c. Cum apostolus

their severall qualities, as namely the Archbishop to 40. or 50. men with their horses, the Bishop to 20. or 30. Cardinals to 25. (though it stick in their stomachs so to be undervalued) Archdeacons to 5. or 7. Deans, (that is to say *Achipresbyteri rurales*, as the Glosse expounds it) to two only, which qualification of number eased a litle, and but a litle, the burden that was still heavy upon the Clergy. For though *Boniface* did tolerate the receipt of money in lieu of victuals, and made it lawfull for the Visited to compound with their Visitor for their entertainment, yet the composition in money was oftentimes upon such hard terms, that the remedy proved as bad as the disease. Little the better were the Clergie for having the Visitor limited to a certain number of Attendants, whilst he was left unlimited in the summe of his receipts to make his composition as it pleased himself. Yea, we shall find that the exorbitances of the Visitors in this particular were such, that they gave occasion to Pope Clement the

*Gloss. in v. Decani.  
Exi. cod. c.  
Cum Apollolus.  
Extrav. Com. de  
Censibus c. Vas  
electionis.*

Ca. Ad nostrum  
eod in Clement.  
Antiquit. Bri-  
tan. pa. 172.

Gloss. in v. Im-  
solterum. c. Cum  
fit in Clem. de  
censibus

Fifth to complain bitterly of them in the  
Council at *Vienna* (which began in the  
Calends of *October*, Anno 1311, and ended  
upon the sixt of *April*, the year following,  
as the Glosse precisely sets it down) name-  
ly that the Prelates and other Visitors did  
exact *Procurations*, yea even from exempt  
places and Orders priviledged (the Cister-  
tians themselves could not goe free) that  
they carried with them Hounds and  
Hawks contrary to a Prohibitory Canon  
of the aforesaid Council of *Lateran*, yea  
that they so farre forth proceeded with  
them, that unlesse their intemperate appe-  
tite were satisfied, and that they had rea-  
dily ministred unto them as much as they  
unreasonably required; down went the  
dores of Monasteries, Church doores were  
broke open, and what they could lay  
hands on (the ornaments of the Church  
not excepted) should away, *Intolerabilia  
gravamina eisdem cumulantur*. Now these  
grievances were in effect but complained  
of in this Council; and albeit they  
were prohibited under pain of Gods in-  
dignation;



dignation, yea and of the Popes too, yet were they not thoroughly redressed until the time of *Benedict* the Twelfth, who next succeeded *Clement*, save *John* the 13. that came between them. He, I say, taking into consideration the abuses of the Visitors towards the Clergy visited (notwithstanding many good Laws made to the contrary) namely that they became so burdensome to them in the exaction of *Procurations*, *Ut oppressi subditi huiusmodi onera nequeant supportare*, to use the very words of the Constitution. In the second year of his Popedom, and about the year of our Lord, 1337. makes a Canon or Constitution, and in the same proportions a rate in money in lieu of *Procurations* in victuals, a certain summe payable out of Monasteries, Priories, and other Churches visited, and requirable by the Visitor according to his quality and the conditions of the parties visited, more or lesse, leaving it still to the liberty of the visited, either to pay so much money or victuals as before, if they thought better. And this consti-

Ca. Ad nostrum  
cod. in Clement.

Extrav. Com de  
Censibus c. Vas  
Eli. & onis.

constitution of *Benedict* the Twelfth, put an end to that troublesome business even throughout the Christian world (where the Pope had sway of jurisdiction) that before that time groaned under the burden of intolerable exaction. Hither all Visitors are directed to have recourse for their pay, where custome hath not limited the summe of their receipts. But for Archdeacons Procurations, *Lindwood* tells us that the usuall summe of their receipts in money was in his time (and that was in the reign of *Hen. 3.* somewhat above 100. years agoe) seven shillings and six pence, that is, according to the number of his Officers and Attendants to each man 12. d. and to the Archdeacon himself 18. d. And so I have done with the first *Quære*, and doe now proceed to the second, and that is.

2. *Whether Procurations be due, Ratione Visitationis?*

Out of doubt they are, and great reason that they should be. The voice of nature

nature in an Heathen man spake thus,  
 and perswadeth to yield <sup>id est ut dicitur</sup> And <sup>Phocylid.</sup>  
 not only the voice of nature but the God  
 of nature pronounceth, that *Dignus est o-*  
*perarius mercede*, Luc. 10. And St. Paul rea- <sup>Luc. 10. 7.</sup>  
 sons thus. <sup>1 Cor. 9.</sup> Who goeth to warfare any time at  
 his own cost? who planteth a Vineyard, and eat-  
 eth not of the fruit thereof? who feedeth a flock  
 and eateth not of the milk of the flock? If we  
 have sown unto you spirituall things, is it a great  
 matter if we reap your carnall things? Thus the  
 Apostle excellently, and by way of Ana-  
 logic to the equity of this due, brings ar-  
 guments such as the wit of man cannot  
 move, much less overturn them: For  
 what are Visitations other then laborious  
 travellings from place to place, joyned  
 with an industrious vigilancy and circum-  
 spection in the Visitors, and for this very  
 end, *Ne quid detrimenti capiat Ecclesia*; to  
 keep Christs Vineyard from havock and  
 spoil, to see unto aswell the building and  
 holding up of the spirituall Temple, as  
 the fabrick of Gods materiall House. He  
 plants, he sows, he feeds, his labour is  
 C painfull,

painfull, and his care great, and all to e-  
radicate sin, and to encourage virtue. In  
a word *Schismata componere* id est in se componere ut non dissident,  
1 Cor. 12. *Cetera disponere*, that all things  
may be done convenienter ad id quod est, 1 Cor. 14. 14.  
In a word thus, *Visitationum omnium istarum*  
*precipuus sit scopus sanam orthodoxamque do-*  
*ctrinam expulsis heresibus inducere, bonos mores*  
*tueri, praeuos corrigere, populum cohortationibus*  
*et admonitionibus ad religionem, pacem, innocen-*  
*tiamque accendere.* So the Trene Council (I  
would in all things so) right and well.  
And long before that Council, Innocent  
the Third out of the aforesaid General  
Lateran Council declaring the right use of  
a Visitation, sets it down thus: *Porro vi-*  
*sitationis officium exercentes non querant quae sua*  
*sunt, sed quae Iesu Christi, praedicationi et cohor-*  
*tationi, correctioni et reformationi vacando.* So  
then this being, as you see, a burdensome  
and a toylsome task, a labour of pain so  
necessary, and withall conducing to so  
good an end. It is but just that some an-  
swerable compensation should be made,  
some exhibition yielded to the Visitor, by  
him

Act. Concil.  
Trid. sess. 24.  
cap. 3.

Ext. de Censi-  
bus ca. Procu-  
rationes.

him or them who principally are interested in the good of his travell. Neither stands this payment or exhibition upon conveniency only, but necessity also. There is a *debetur* in it, saith *Vallensis*, upon which the Visitor founds his claim, and such a *debetur* as admits of no opposition or stop in Law to crosse it; for the argument holds strong, *Episcopus cum visitare jure communi debuerat, de jure communi debet habere tunc Procuracionem, quia nemo suis stipendiis cogitur militare*. Here is the reason of the due: And it is a rule in Law, that *Accessorium sequitur naturam sui principalis*. And if *ex debito principaliter* the Bishop or Visitor ought to visit, then *ex condigno accessorie* he ought to receive, no man will deny; for a neerer relation there seems not to be between work and wages, then is between Visitation and Procuracion; yea, so near they are, that no negative prescription, to wit *de non solvendo* hath been held available in plea or proof at Law against the right of Procuracion, especially as it relates to Visitation, except in the case of Papall pri-

Gloss. in ver.  
Consuetud.  
c. Cum ex offici-  
ciis, Ext. de  
Prescriptioni-  
bus, Ext. de  
Censibus c. Cum  
Venerabilis.



Gloss. in c. v.  
 revabili v. vati-  
 onabile, Ext. de  
 censuras.

Ext. cod. c. ex  
 Officiis.

viledge or extreme poverty of the visited. In the Decretalls mention is made of a certain Archbishop, namely the Archbishop of Sens (*Senonensis*) a French Prelate, that visiting of his Province, he came unto the Churches of the Abbot of St. Magloire, and of the Prior de Castres, and of some others in the Diocess of Paris, which he visited, & *ea ratione* demands Procurations; which were denied him for this cause, namely for that they had not formerly been yielded to the Predecessor of the said Archbishop. Hereupon the Archbishop proceeds, and suspends all that stand out, and refused to satisfie his just demands; and afterwards upon their further contempt excommunicates them, and so acquaints Pope Innocent the Third with what he had done: Who presently writes to the Bishop of Paris, letting him to know, that forasmuch as against Procurations due *ratione visitationis* no prescription ought to be admitted, as neither against a visitation it self, although both might haply in respect of time be prescribed against.

gainst. *Ideoq; mandamus* (saith the Text) *quatenus sententiam quam in hujusmodi contemptores de antiqua Metropolis consuetudine tulit Archiepiscopus memoratus usq; ad satisfactionem condignam facias observari.* Thus Pope Innocent. And after the same manner did Honorius the Third write on the behalf of another French Bishop (to wit the Bishop of Maine (*Cenomanensis*) which Bishoprick, as I suppose, is within the Dutchy of Anjou) complaining against the Abbat and Corvent *de Cultura* of his Diocess that refused to pay him Procurations in his visitation, alledging this for their reason, *Quod ipsi hactenus Procuracionem non solverunt*, which being not admitted for a good plea, the said Pope rescribes thus: *Discretioni vestrae* (writing to the Abbats *de Tyron* and *Josaphat*, his delegates in that cause) *Mandamus quatenus nisi aliud & rationale ostenderint, vos eos ad exhibendum eam sicut justitiam compellatis.* To this effect Honorius; and after him Gregory the Ninth sends out his *Mandate* to the same purpose throughout the Province of *Benaventum* in the Vi-

*Gloss. in v. non  
solverunt c. Ve-  
nerabilis, Ext.  
de Censibus.  
& ibi textus.*

*Ext. de Censi-  
bus cum nuper.*

sitation of an Archbishop there. We may conclude therefore out of the Canon Law, that Procurations are due, and ought to be paid *ratione visitationis*. And so I have done with the second *Quære*. The third and last is,

3. *Whether Procurations be only due Ratione visitationis, and no otherwise?*

I answer, not so only, though principally so. The Canonists *ex hypothesi* propound this question, namely, that if a Church be so neer unto the Visitor that there needs no travel, and so little or no labour is bestowed in the visitation thereof whether a Procuration may lawfully be required from that Church? And albeit the question be negatively held by some, yet by the most it is affirmatively answered, namely, That *Procursatio solius laboris in ruin non exhibetur, sed etiam in signum superioritatis, & ut facilius Prælati ad visitandum inducantur*: So that howsoever the visitors pains be but little, and his charges nothing at all, yet is not the Procuration for that cause to be lessened,

Gloss. in ver.  
peragando. S.  
ulterius apud  
Lancelotum  
Inst. juris Ca-  
non. l. 2. tit. 21.  
ubi de Censibus.  
Hostiens. sum. de  
Censibus. S. a  
quibus.



it must be yielded notwithstanding, in *signum superioritatis*. But to come neerer to the point, Boniface the Eighth, of whom mention is made before, writing to a certain one whom he had appointed his Collector, to gather up a Tenth from all Ecclesiasticall Livings, and persons throughout *Italy* and elsewhere, for the maintenance of a warre he prosecuted in the Kingdome of *Sicily*, and intimating to him whom he would have charged, and whom excused, saith thus, *De illis autem Procuracionibus quas Prelati in pecuniâ numeratâ rite percipiunt ab antiquo, & quas perciperent, etiam si non Visitatione decimam prestare tenentur.* And again, *Prelati autem qui Procuracionem quam sine Visitatione potuit de jure percipere in pecuniâ numeratâ, &c.* By which it is manifest that there is *Procuratio sine Visitatione*; But what *Procuracion* is here precisely meant may fall into question. To which I answer, that I find mentioned in the Canon Law divers kinds of *Procuracions*, arising from different reasons; as namely first from *Visitation*, secondly *Pact*, thirdly *Priviledge*, fourthly and

Extrav. commun. de Decimis c. Declarationes.

Ext. de Censibus c. quanto. Gloss. in v. Visitationis c. Procuraciones, ext. cod. c. Ad nostrum cod. in Clem. c. vas electionis cod. in Extravagant. Gloss. in v. non solverunt, c. Vennerab. ext. de Censibus.

and lastly *Custom*, all which, as they did arise from different reasons, so were they paid at the first in a different manner. Viſuals were anciently and solely the viſitation *Procurations* till this Pope *Boniface* his time who made money passable in lieu of viſuals for that payment. The rest, as I conceive, were all paid in money; so then the *Procurations* from whence the Pope was to have a Tenth, being in *pecunia numerata*, and being then *ex antiquo, et de jure*, in that sort due, as in the Text is evident: And money for viſitation *Procurations*, but even newly tolerated to passe: both *Viſitation* and *Custom* too as prescribed from that right, are quite excluded from the causality of this pay in this place, as I take it. It is probable then, that from one of the other Reasons of *Procurations* the Tenth before spoken of was requirable, but for which of them, as it is not much materiall on my part curiously to seek after, so neither is it of consequence for any to know, there being at this time no *Procurations* from any such cause, to wit, of Pact or Priviledge, in use of receipt in  
this

this Kingdome, that I know, or have yet heard of. That which I intend, and aim principally at in the solution of this third and last *Quere* (and is of frequent use in these times) is to set forth the claim that *Custom* makes, and the right that surely it hath to this Ecclesiasticall payment of *Procurations sine visitatione*. To make good therefore the receipt of *Procurations* by this reason, we are first to set down the speciall properties required in a prevailing Custom, which, in short, are chiefly two: The first is, that it be *rationabilis*: The second, that it be *legitimè prescripta*. Now that Custom is said to be *rationabilis*, and so consequently *inviolabilis*, *quæ nec divino juri contradicit, nec obviat Canonicis institutis*, that contradicts not the divine Law, nor meeteth the Canonick Institutes in the front of opposition. And that is said to be *legitimè prescripta*, when *bona fide* it is prescribed for the space of 40 years. If these two, to wit, Reasonableness and sufficient continuance of time doe meet together in a Custom, they make that Custom *de iure*

Gloss. in v. *Rationabilis*. c. Cum tanto. Ext. de Consuetud. Distinct. 11. c. Consuetud. c. Eccles. Constitutionum.

Gloss. in ver. usque ad hoc tempus, c. servitium 18. q. 2.

impreguably strong. As on the contrary, upon the want of Reason it is as easily overturned, though never so ancient by that known rule in the Civil Law. *Quod initio vitiosum est non potest tractu temporis convalescere*; and that in the Canon Law, *Non firmatur tractu temporis quod de jure ab initio non subsistit*, there being no Custom of such prevailing authority, *ut aut Rationem vincat, aut Legem*, as the Emperor well determines. Now they that turn upon this hinge, I mean that receive Procurations upon the ground of Custom, must look that their receipt or claim be both *rationabilis & legitime precepta*. And this appertaineth especially to such Archdeacons that receive Procurations in the L. Bishops Triennials, and yet visit not, whereof there are divers in this Kingdom. Certainly the time was, that Archdeacons had *jus visitandi quolibet anno*, and did accordingly visit, & *ea ratione* receive Procurations, the Glosse upon the Provincial Constitutions intimates as much. And in the Decretals *de officio Archidiaconi*,

Paulus l. 29.  
H. de Regulis  
juris.

C. non firmatur  
18. de Regulis  
juris in 6<sup>o</sup> &  
Dy. ibi.

In l. 8. tit. 32.  
C. Quæ sit longa  
consuetudo.

Gloss. Lind.  
in c. 1. in ver  
Visitation. Pro-  
vinc. Constitut.  
de offic. Archid.  
41.

we read that Pope *Alexander* the 3. wrote unto the Bishop of *Coventry*, and to the Abbat of *Chester*, and commands them to forbid the Archdeacon of *Chester* to visit the Churches within his Archdeaconry above once a year, *Nisi talis causa emerferit propter quam ipsum oporteat prefatas Ecclesias saepius visitare.* Once a year and no more, *Nisi talis*, &c. which implies that once a year at least he might; surely in ages past he might doe so: But Time that turneth all things upside-down, and makes them seem to be what they are not, hath altered the course of former dayes, and brought it now to this issue, namely, that the Archdeacons (not all, but of many places) must one year in three suffer the light of Archidiaconall authority to be eclipsed by the greater light of Episcopall power, and content themselves with their Procurations only, which yet the Clergy in many places think much to pay, in respect not only of the many payments that lie heavy upon them (wherein those of the meaner ranck are much to be pitied) but

*Ext. de offic.  
Archid. c. Mandamus & Gloss.  
16. in v. saepius  
visitare.*

*ἡ δὲ αἰτία  
αὐτῶν παρὰ τὴν  
ἀνάγκην αἰσθῆται.*



especially because the Archdeacons demands at that time doing no service at all, seem to them to be altogether unreasonable. For the receipt then of Procurations by Archdeacons in the years of Episcopall visitations, when some of them visit not; and to make the Custome by which they receive them firm and good. They are first, as before is said, to shew sufficiency of cause and reason for this receipt, to make it *rationabilis*; and next to set forth sufficiency of continuance, to make it *illegitime prescripta*. In explication whereof, and application to our present business, I intend to be very brief, beginning with the former part or property of a good Custome, namely Reasonableness. But with serious protestation in the first place, that I labour not by any argument to introduce a payment that hath not formerly been, or to impose a burden heretofore not known or born; for that were in effect to go about, *admirare iuris*, and to meddle with things that ought not by any private fancy to be moved or meddled withall, that were  
 little



little else then *hæreticall* forbidden by *Isocrates.*  
 the Oratour as perilous in a well settled  
 State. No, but my endeavour shal be to of-  
 fend such reasons as I can for paymets now  
 in use in places where they are used, and to  
 stretch out the line of my discourse no fur-  
 ther; which if they prove to be of weight,  
 it may haply fall out, that what formerly  
 the Clergy (to their great charge) contra-  
 dicting this payment, have in *contradictoria*  
*judicio* been forced to pay, and what at  
 this day they pay, though discontentedly,  
 as being conquered rather by Law, then  
 fully satisfied in point of reason, they will  
 with a willing mind *as I say*, as the A-  
 postle, readily, chearfully, and peaceably  
 tender to their Visitor. To proceed then;  
 Procurations are in effect the Living of  
 the Archdeacon valued to him in the  
 Kings books, for which he payeth yearly  
 Tenths, and Subsidies also, as they fall  
 out to be due. And should a man yearly  
 pay, and not yearly receive? No, for the  
 contrary to be the intent and meaning of  
 the Kings and Queens of this Land may  
 D 3 evidently

2 Cor. 8. 11.

## De Procuracionibus. 10

*Et aliter de  
amplius gratis  
nostra exonerat  
vimus, &c. pre-  
fatum de  
omnibus & om-  
nimodis Corro-  
diis, Reddit.  
feod. annuat.  
personibus, por-  
tionibus, &c.  
Præterquam de  
— eadem Re-  
cloria de — ex-  
eunt, ac Archi-  
diacono de —  
& successoribus  
suis pro Proc-  
urationibus &  
Synodalibus  
Annuatim sol-  
vend. &c.*

evidently be demonstrated. For that in such Grants, as I have seen from the Crown of Improprate Rectories, those payments (annual payments) of Procurations, and so of Synodalls too, are continued and left as a charge (though many other burdens are taken away) upon the Proprietories. Again, whereas many other Ecclesiasticall Livings, since the Certificate of their value into the Exchequer about the 26 of H. 8. are improved and made better; Procurations are like the Talent hid in the napkin, they continue without one farthing improvement. Improvement doe I say? Nay, I am perswaded that few Archdeacons receive in Procurations to the summe of their valuation: Poverty sometimes of the Incumbents death, and such by-blows, cuts them short of many, and makes them heartlesse, to seek where little or nothing is to be found. And yet are they charged with full payments of Tenths and Subsidies, which are high upon fruits of this nature, for valued by the penny as these Procu-

inations

tions

## De Procuracionibus

tions are, 5 l. out of 50 l. goeth out for Tenth alone; And shall a man pay, pay thus, and not receive? surely he that is necessitated to pay, should necessarily receive (and doubtless with good conscience he may) that which occasioneth and is the sole reason of his pay; yea, the receipt of Procurations in this case is so farre from being unconscionable in the Archdeacon, though he visit not, that the detaining of them seems to me to be unreasonable; For in that the Archdeacons some of them (I say some of them, for all are not excluded) visit not in the L. Bishops Triennials, the fault's not theirs, when not out of willfull omission, but Canonically submission, they forbear to visit, and strike sail to the commandment of their superiors: And shall they for their obedience be deprived of their accustomed rights? I leave that to the judgement of indifferency. The Rule of Law, and surely of Reason too, that *Imputare non debet ei per quem non fiat, sed non faciat quod per eum fuerat faciendum.* A man in the

*Ab. sic. super 2.  
mi de officio  
Archid. c. de  
Archidiaconus.*

*Ca. Imputari  
41. de reg. iuris  
in 60.*

the Law is not held to be faulty for omitting to doe what by his superiour he is not permitted to doe. Nither is it of weight (as I conceive) that some urge, That forasmuch as all Archdeaconries, or the most part of them have their corps, to wit, some spirituall dignity or promotion appendant to them, the Archdeacon that hath such Corps ought to live upon it in the years when he visits not, and out of the profits arising thence (poor and jejune perhaps) to sustain and defray the whole charge of the Archdeaconry. It is true that many, yea most Archdeaconries have their Corps annexed to them, but none that I know *sine sarcina*, none but hath its peculiar payments and charge of Tenths, Subsidies, or Pensions, or all together appendant, even to the full, as much, or rather more then any other Ecclesiasticall Living of that nature. And to charge them with more then their own burden (which is found oftimes heavy enough) would be a hard imposition, to speak the least. But especially, if it should so happen that the

Arch-

## De Procuracionibus.

33

Archdeacon had no other means (as such there have been as well in this Kingdome, which I could name, as in forein parts, as *Duarenus* doth remember) then were it indeed intolerable, and the rather in two respects especially : First in respect of his Order, for therein considered he is a person of speciall and remarkable Quality. Secondly, in respect of the Office that he sustains, which is *Dignitas principalis post Episcopum in Ecclesia* : and upon which there is, at least in former times there was, so much dignity appendant in regard of the amplitude of power and jurisdiction that he had under the Bishop, that *Philsp*, a fifth Son of *Lewis* the Gros King of *France*, disdained not to take upon him the Office of an Archdeacon in *Paris*, as Stories tell us. And for such a one to want correspondent accommodations is *ad auctoritatem*, a most unseemly & absurd thing. He is called *Oculus Episcopi, Diaconus circumlustrator & perscrutator. Vicarius post Episcopum ad quem in omnibus in Clero omnis cura pertinet*, with such like Titles of eminency. Now should he be deprived of

*Duaren. l. 2. c. 4.  
de sacris Eccles.  
ministeriis &  
beneficiis.*

*Ab sic. super se-  
cunda prim. de  
offic. Archi-  
p. e b c. ut Ar-  
ch. presby. er.*

*Paulus Amili-  
us Tilius.*

*Ext. de Offic.  
Archid. c. ut  
Archidiaconus,  
& c. Ad hanc  
Omnes. Pandin.  
Int. rpi. vocum  
Ecclesiast. in fi-  
ne chronici sui  
ad Platin. de  
vitis Pontif. p.  
61.*

E

his



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his just rights, it would come to pass that his care would be so much to provide necessities for himself at home, that he should find little leasure *circumlostrare*, to look into the field of the Church, and to take care for others abroad. But I know with whom I have to doe, they are Scholars whose readines to apprehend a reason and ingenuity to acknowledge a right, I trust will prove such, as that I shall not need to beat more ground for reasons; which yet were there cause, I could easily add to give them satisfaction in this point, namely of the *Reasonableness* of the Archdeacons receipts of Procurations in the L. Bishops Triennials. I descend therefore to the other property of a prevailing Custome, namely, *Sufficiency of Continuance*, whereof in a word.

It hath been *Ultra hominum memoriam*, and so equivalent to an Imperiall Privilege or Constitution; for it is an hundred years since the Certificate upon the Commission of *Melius inquirendum* concerning Ecclesiasticall Livings was returned into the Exchequer, at what time it was certified

*ff. de aqua quod  
us. & altiva  
l. 3. §.  
Nullus aque.*



tified what particular payments were yearly then made to the Archdeacons of the severall Diocesses in this Kingdome out of Ecclesiasticall Livings; and thereupon their receipts became accordingly valued in the Kings Books, and so stand unto this day. And lest the Church by means of the suppression of Monasteries, and other Religious Houses (from whence Procurations, and such like dues before that time had been usually paid to Ecclesiasticall Governors) should receive detriment, and be impeached in its former accustomed receipts & rights, when all the Lands and Possessions of those Religious Houses were settled in the Crown, & came into the Kings hand by Act of Parliament, there was afterwards another Act of Parliament in the 34 of H. 8. by which a strict provision was made for the due payment of all such Ecclesiasticall rights, as namely Pensions, Portions, Corrodies, Indemnities, Synodies and Proxies, that were payable to, and in the possession of any Ecclesiasticall person, ten years before the Dissolution: No preceding visitation, or o-

ther causall act or motive inducing thereunto, more then that such due had accustomedly been paid out of the said Religious Houses.

And thus have I runne through, and given answer briefly to the third and last enquiry, wherein I have endeavoured to prove : First, that there is Custome for the receipt of Procurations without visitation : And secondly, the same (from the grounds of Reason and Continuance as to that point) to be warrantable & good. And to make the matter clear, I have thought good to subjoyn, as most pertinent and satisfactory (such in my opinion) to the present business, the subsequent Case of Proxies; which (devested and stript from its ancient *Norman* dresse, and clad in plain *English*) presents it self to the Readers view as followeth, viz.

Trin.

*Trin. 2 Jacobi in the Exchequer.*

The Case of Proxies

*Between the KING and Sir Ambrose Forth,  
Dr. of the Cirvil Law, and one of the Ma-  
sters of the Chancery. The Case was this.*

**T**He Bishop of *Meth* before the dis-  
solution of Monasteries had a  
Proxie of 15 s. 4 d. payable yearly  
out of the Commandery of *Kells* in the  
County of *Meth*, parcell of the possessions  
of the Hospital of *St. John of Hierusalem*  
in *Ireland*, and another Proxie of 20 s. pay-  
able yearly out of the Improprate Recto-  
ry of *Trevet* in the same County, parcel of  
the possessions of the Abby of *Thomas-*  
*Court* in the County of *Dublin*.

In the 33 year of *Hen. 8.* the said Hospi-  
tall of *St. John of Jerusalem*, and the said  
Abbey of *Thomas-Court* were surpessed  
and dissolved, and the possessions of both  
the said Houses were vested in the actuall

and real possession of the Crown by Act of Parliament. But in the same Act there is an expresse *Saving* of Proxies to all Bishops and their successors. After that the Bishop of *Meib* and his Clergie (for that Bishoprick hath no Dean and Chapter) did by Deed enrolled, dated 16. *Martii* 36 *Hen.* 8. grant the Proxies aforesaid (*inter alia*) to K. *Henry* the eighth, his Heirs and Successors, the said King being at the time of the Grant and after in actuall possession of the said Commandery and Rectory, out of which the said Proxies were payable.

Afterwards Q. *Eliz.* by her Letters Patents dated 1 *Novembris* in the 33 year of her reign, did demise the said Commandery and Rectory to Dr. *Forth*, rendring rent without any reservation of Proxies. And whether he shall be now charged with the said Proxies, and with the arrerages of them incurred since the commencement of his Lease was the question? and it was adjudged that he should be charged: and three points were stirred, and debated

debated in the argument of that case.

1. Whether the Proxies were utterly extinct by the suppression & dissolution of the said Religious Houses of St. John of Jerusalem; and Thomas-Court, notwithstanding the Saving within the Act of Dissolution?

2. Whether the Bishop can grant the Proxies to the King?

3. Whether the Proxies were extinct in the hands of the King by the unity of possession.

For the first point it was objected by the Counsell of Sir Ambrose Forth, that these Proxies were extinct by the suppression and dissolution of those Religious Houses; for that the visitation of these Religious Houses was the sole cause of the payment of Proxies, *Et cessante causa cessat effectus*. For those Religious persons being deraigned and dispersed, were not after that subject to Visitation; and then when the Visitation ceased, the Proxy being also an exhibition given to the Visitor, for his travelling charges shall cease also.



## De Procuracionibus.

also. For *Procuratio*, (as the Canonists define it) *est exhibitio sumptuum necessariorum facta praelatis qui dioceses peragrando Ecclesias subiectas visitant.*

Yet they agree that the Visitation ceaseth not immediately by the surrender, or by the Act of Parliament which giveth those Religious Houses, and their possessions to the Crown : for by that their Corporations were not dissolved, as 'tis held in the Case of the Dean and Chapter of *Norwich*, in the third part of the Lord *Cokes Reports*, 15. *Aff. p. 8.* 32 *Hen. 8.* *Br. Corporations* 78. But when those Religious persons were deraign'd, and had relinquished their habit, rule, and order, for which they were visitable, then the Corporation was utterly dissolved, and upon that the Visitation ceased.

And they resembled the Proxie due for Visitation to an Annuity *pro consilio*, or *pro servitio impendendo*. If the Counsel or Service be withdrawn, the Annuity is determined. So if a rent charge be granted for a high-way : stop the way and the Rent-charge



charge shall be also stopped. 9 *Edw.* 4. 19.  
 15 *Edw.* 4. 2. 21 *Ed.* 3. 7. 45 *Edw.* 3. 8. *Dier*  
 6. *H. n.* 8. 2. & 6 *Ed.* 6. 76. So also where  
 a *Corodie* is granted for certain service to be  
 done : Omission of the service determines  
 the *Corodie*, 20 *Edw.* 4. fol. ultimo.

'Twas also said, that this duty was not  
 annuall, but contingent, and payable on-  
 ly at every visitation ; as *Escuage* for every  
 journey Royall ; or as *Aid* for marrying  
 of a Daughter, or for making a Sonne a  
 Knight. In which last Cases, if an *Avowry*  
 be made for *Aid*, 'tis a good plea in barre  
 thereof, to say that the Avowant had not  
 such Sonne or Daughter alive at the time  
 of the *Aid* levied, *N. N. Br.* 82. 2.

And for the *Saving* they said, that the  
 same was a *Flattering Saving*, which could  
 not preserve the Proxies in being which  
 the Law had extinguished, as it was held  
 14 *Eliz.* *Dier* 313. That the Tenure of Obit  
 or Chauntry Lands held of Subjects are  
 extinct by the Act of 1 *Ed.* 6. notwith-  
 standing the *Saving* in the said Act *propter*  
*absurditatem* : So the Proxies in like man-

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ner shall also be extinguished *propter absurditatem*. For as it is absurd that the King should be subject to attendance in respect of Tenure, so it is absurd that the King should be subject to Visitation, or to any duty in respect thereof. And of the same nature are many Savings, put in *Walsingham's Case*, *Plow. Com.* 563. which are there called *Flattering Savings*.

2. For the second point, it was objected, That the Bishop could not grant the *Proxies* to the King for two Reasons: The one deduced from the person of the King, the other from the person of the Bishop.

1. First for the King, admit that he were capable of such Spirituall Office, as to be Visitor of Religious persons, yet shall he not have *Proxies* in respect of Inconveniency and Indecency, and also Impossibility; for it is not convenient or decent that these poor Religious persons should bear the charges of the King, and it is also impossible: for by the Canon Law *Procuratio exhibenda est secundum qualitatem persone visitantis*. And the Majesty of the Kings

Kings person, and the greatness of his Train is such, that by præsumption of Law no private person can bear his necessary charges, or make entertainment for him correspondent to the quality of his person. And therefore 'tis held 27 *Henr.* 8. 10. *b.* That where Common *sans number* was granted to an Abbat, and his Successors out of the Manor of *Dale*, that after the Dissolution the King shall not have the Common *sans number*; for it is there said, that if the King have it he may surcharge the Land, which the Law will not suffer. As if a Villain purchase Common *sans number*, the Lord shall not have it for the reason aforesaid; for then the Ter-tenant may lose the profit of the Land.

For the Bishop, though he may grant his Temporall possessions, with the assent of his Chapter or Clergie, yet those duties that he hath by Prerogative of his Episcopall chair, or as incident to his Spirituall function, he cannot grant, which according to the Rule of the Canon Law are

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of three kinds. 1. *Subsidium Cathedraticum*, which is a duty of Prerogative and Superiority. 2. *Quarta Episcopalis*, which is given to him for the Reparation of Churches. 3. *Procuraciones* for his visitation, *ut supra*, which is a perquisite or profit of his Spirituall Jurisdiction: as Creation money given to a Duke or Earl for maintenance of his honour, cannot be granted over: 6 Hen. 8. Dier. 2. 2.

3. For the third point they said, that albeit the *Proxie* be a personall thing, payable only in respect of the persons visitable; yet admit that these *Proxies* are become reall, and that the Commandery and Rectory be charged with the same *Proxies*: then the unity of Possession extinguisheth them in the hands of the King. As a Lordship, Rent-charge, Common, and the like are extinguished by the purchase of the Tenant, if he hath equall estate in the Land, and in the thing which chargeth the Land. And to this purpose the Case of 2 H. 4. 19. 4. was put; where a Prior had an Annuity out of a Parsonage  
by

by Prescription, the Parsonage is appropriate to the Priory and the Annuity is extinguish'd for ever.

*But on the other part it was answered by the Kings Councell, and resolved by the Court.*

1. **T**Hat the said *Proxies* were not extinguished by the Dissolution of the said Religious Houses, but were well preserved and saved to the Bishop.

2. That the Bishop had well granted them to the King.

3. That the unitie of possession in the Kings hand did but suspend, not extinguish the *Proxies*.

As to the first point it was observed: First that *Proxies* had not their originall in the primitive Church; for St. Paul visiting all the Churches which he had planted in *Asia* and *Europe*, demanded not any *Proxies*, but laboured with his own hands for his maintenance, that he might not be burdensome to the Churches. Yet long after the Canon Law, which declares that



*Instit. Juris Canon. l. 2. ca. de cens.*

Proxies are due to the Bishops in their Visitations, saith, that it is agreeable to the doctrine of St. Paul; *Ut a quibus spiritualia recipimus eisdem temporalia communicemus.*

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*Distinct. 35. c. Eccles.*

Secondly 'twas noted that the same which we call Proxie or Procuracy, is termed by the Canonists *Procuratio*, because that in every Visitation the persons visited procured necessary provision for the Visitors, which provision at the first was in victuals, viz. in *Esulentis & Poculentis*; and that was to be received with moderation and temperance; *Ne jejuniorum doctrinam rubentibus buccis predicent*, as it is said in one of the Canons.

But afterwards, when the pomp and ex-  
 cesse of the Visitors required so great Pro-  
 visions as were grievous and intolerable  
 to Churches and Religious Houses, then  
 every Church and Religious House was  
 reasonably taxed; and thereby Proxies re-  
 duced to a certain sum of money payable  
 yearly in the nature of a Pension to the  
 Ordinary, who had power of visitation  
*mero jure*, as 'tis said 10 *Eliz. Dier 273. b.*

And



And this was aptly resembled to Socage in our Law, of which *Littleton* saith, That in ancient time a great part of those Tenants which held of their Lords by Socage, did come with their Sokes [their Ploughs] certain dayes in the year to plough and sow the *Demefnes* of the Lord; and because that such workes were done for the livelyhood and sustenance of their Lords, they were acquitted against their Lords of all other services.

Afterwards these services were changed into money by consent of the Lords & desire of the Tenants, that is, into an annual rent. And as the Tenants in Socage after the said change paid their rents yearly to the Lord, although he had aliened his *demefnes*, and had no land to be ploughed or sowed, so the Churches & Religious Houses, after the Procurations of victuals were reduced to a certain sum, paid them yearly to their Ordinary though he made no Visitation; and so the Rule of *Cessante causa cessat effectus* holds not in these Cases. And to this purpose directly is Sir *William Capel's*

*Capels Case* put in *Luttrells Case*, in my Lord Coke his fourth Report, where it was resolved, That Land being holden by a Rent payable for the keeping of a Castle, that though the Castle be demolished or decayed, yet the rent must be paid : For 'tis there said, That where the Tenant holdeth of the Lord to keep or repair the Castle of the Lord, and afterward such service (as *Littleton* saith in the Case of *Socage*) was anciently by mutuall consent of Lord and Tenant) changed into an annual rent, although the said rent be *pro warda Castri*, yet the Lord cannot have the keeping of the Castle back again when he will ; for after the composition and change made, the keeping of the Castle is utterly gone. And *Pro* imports no condition, as in the Case of an Annuity granted *pro consilio impendendo*, but a plain and perpetuall recompence and satisfaction. By the selfsame reason in our Case, albeit that the Parsonages impropriate are now made layfee, and are come into the hands of lay Gentlemen, which are not visitable ; and though

though that the Religious Houses are suppressed, dissolved, and overthrown, as the Castle in Sir *William Capels* Case; yet the said certain summes of money which came in lieu of *Proxies*, and retain the name of *Proxies*, and by ancient composition are become parcel of the certain and settled Revenues of the Bishop, shall remain for ever, and shall not be subject to extinguishment, no more then Annuities, Pensions, or Portions of Tythes, which are paid to this day out of many Abbies & impropriate Rectories, and the originall causes for which they were first granted or paid, shall not be now examined or brought into question. And at this day the King himself doth pay and allow *Proxies* out of all Impropriations which he hath in his possession; and therefore in every Lease made by the King of an impropriate Rectory, the Lessee doth covenant to discharge all *Proxies*, Synodals, Pensions, &c. And Sir *Humphry Winch* then chief Baron (at the hearing of the said Cause) said, That before the dissolution of Monasteries, where a Rectory was Appropriate

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*De Procuracionibus.*

priate to an Abbey immediately the Visitation ceased as to the Rectory; for the Abbat was not visitable as Rector for his doctrine, but as Abbat for his rule and order: And yet without question the Ordinary had his Proxies out of all Parsonages appropriate to Abbies as well before the dissolution as after.

And for the *Saving* in the Act de 31 Hen. 8. ca. 5. the same is no idle or *Flattering Saving*, but reall and effectuall: for it is agreed before, that those Proxies were in being at the time of the making of the Act, and not extinguished by the surrender of the Religious Houses; for their Corporations were not dissolved untill the Religious persons had relinquished their houses, and were dispersed. And then such things as were in *Esse* at the time of the making of that Act might well be preserved & saved by the Act, though the things extinct before could not be revived by a *Saving* without expresse words of Grant and Restitution. And this difference appeareth plainly in the Case of *Kekewich* 27 Hen. 8. *Brook Parliaments* 77. And in Sir *John Molins* Case in the sixth  
part

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part of my Lord Cokes Reports.

As to the second point it was resolved,  
That Proxies in their originall nature, being duties payable for visitation, were grantable to the King, and the King was capable of such grant, especially when the said duties were converted to a summe of money certain, in the nature of a Pension or Annuity : For by the ancient Law of the Realm the King hath power to visit, reform, and correct all abuses and enormities in the Church; and by the Statutes made in the time of *Hen. 8.* the Crown was only remitted and restored to its ancient jurisdiction, which was usurped by the Bishop of Rome 33 *Ed. 3. Fuz. Aid del Roy. 103. Reges sacro oleo uncti spiritualis jurisdictionis sunt capaces.* And *Proxie* is a profit of Jurisdiction, 10 *Hen. 7. 18. Rex est mixta persona cum Sacerdote* : Also by the Common Law the King might have Tithes, of which no [meer] lay person is capable : 22. *Aff. p. 75. 21 H. 7. 1.* The King himself shall visit his Free Chappels and Hospitals : 8. *Aff. p. 29. N. Br. 42. a.* And *Cassaneus in Catalogo*

2.



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logo *Gloria mundi*, part. 5. consider. 24. cites a text of the Canon Law, viz. *Quòd omnes Reges dicuntur Clerici*; and another text that saith, *Quòd causa spiritualis committi potest Principi laico*.

And where it was said, that in respect of the greatness of the King and his Train, competent *Proxies* could not be ministred to him, and by consequence could not be granted to him. This objection is taken away, in that the *Proxies* at the time of this Grant were reduced to summes of money certain: As also the Rule of the Canon Law is not plainly cited before, for the Rule is *Procuratio exhibenda est secundum qualitatem personae visitantis & substantiam visitatorum*.

It was further resolved, That the Bishop with the assent of his Clergie might well grant these *Proxies* to the King for that the Law hath qualified the person of the King to receive such Grant, albeit the same be such a Prerogative of the Bishop that cannot be assigned to any other. As the Creation money of a Duke or Earl may be granted and surrendered

surrendered to the King, though it cannot be granted to any Subject. Also *Proxies* being now reduced to a certainty in money, and so made parcel of the certain settled and perpetuall revenue of the Bishop, might be as well granted by him as a portion of Tythes, or an Annuity, or any of his Rents, Services, or other Hereditaments temporall.

And as to the third point, it was also resolved and adjudged, That the unity of possession of *Proxies*, with the Rectories impropriate and Religious Houses, out of which *Proxies* were payable, did not extinguish the *Proxies* in the hands of the King, but suspend the payment of them only *pro tempore quousque*, the King by his Grant should sever the one from the other.

3.

For the finding of the Law in which point, the nature of these things was considered, which in any sort might be subject to drowning, or extinguishment by unity of possession. And they were said to be of three kinds, as

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First,

1. First, Estates in Land.
2. Secondly, Actions reall, and Titles to Land.
3. Thirdly and lastly, Things issuing or coming out of Land, or taken and had upon Land.

1. Estates in land are properly drowned or confounded, when a lesser estate concurs with a greater in the same person, and in the same right: as *Terminus & feodum non possunt constare simul in una eademque persona*; and a pregnant reason thereof is put in the Case of *Bracebridge, Plowd. Com. 319. b.* because Term is a time finite, and Fee-simple is a time infinite; of necessity then the finite must be drowned and confounded in the infinite. *Ob.* But thats confounding, and not extinguishment: for if a particular Tenant grant or surrender his Estate to another in Reversion, the particular Estate is not extinct, though it be drowned and confounded: and if a particular Tenant hath charged the Land with rent or other incumbrance, the Estate shall remain in being to this intent. And in

truth Estates in Land, and right to Land, are things of such substance which cannot be extinct, or *penitus interire*. And therefore Littleton saith, that if a Disseisee, when his entry is taken away, releaseth to the Tertenant all his right, that that shall not enure by way of Extinguishment; for the right that he had passed to the Tenant by his Release. And it were inconvenient that such ancient right should utterly be extinct: For, *droit ne poet pas morier*.

But things that issue out of the Land, as Lordship, Rent-charge, &c. are subject to extinguishment to all intents. As if a Lord grant his Seigniorie or Lordship to a Tertenant and a Stranger, there shall be no joyntenancy or survivor between them, for the moiety of the Lordship is extinct to all intents and purposes: *Plowd. Com. 419. a.* And if a Lord release to a Tenant all his right in the Lordship or the Land, such release passeth by way of extinguishment against all persons: *Littleton 112. b.*

Secondly, Reall actions also, and conditions

ditions are subject to extinguishment, and that is *quasi* by unity of possession. As in all cases of *Remitter*, There, he that hath right of action for Land, hath also the possession of the Land it self; so that there is not any person against whom he can bring his action, and for that cause the action is extinguished for ever.

And upon the same reason, *Condition* which gives title of reentry in Land is extinguished by purchase of the Land, or part of it: 8 H. 7. 8. b. 33 H. 8. Br. *Extinguishment* 49. So warranty is extinguished by Re-*infeoffment* or *Descent* of Land to the same person that had the Warranty: 40 E. 3. 13.

3.

Thirdly, Things issuing or coming out of Land, or taken and had upon Land are of three kinds; and from those different kinds of things these differences doe arise.

If things have their originall and commencement out of Land, and no otherwise, and are due in respect of Land only, and are part of the profits of Land, such things shall alwayes be extinguished by unity of possession,



possession; if a man hath equall estate and right in both together. Of this nature is Seigniorie and reall services : 3 H. 6. 1. a. 40 E. 3. 40. b. Littleton 49. a. 122. b. 34 Aff. p. 15. Rent-charge : Littleton 48. b. Dier 140. b. Common 11 H. 4. 5. a. 24 E. 3. 25. b. Chimin. 21 Ed. 3. a. 11 Hen. 4. 3. a. And two reasons of this rule were brought; one, For that the thing that's extracted out of Land, when it comes back again to the Land, will be naturally extinct; for there is *Revolutio ad materiam primam*, from whence comes naturall extinguishment as well of man as of all other terrestriall things. The other more legall reason, is, That he that hath all profits entirely, shall not be said to have part of the profits, for part is confounded in the whole; and therefore a man cannot have Seigniorie, Rent, Common, or High-way in his own land.

But on the other part, things that are not issuing out of land, as parcell of the profits of land, but are otherwise derived and due upon other respect, albeit they are taken and had within certain land,

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yet

yet unity of possession doth not extinguiſh ſuch things. Of this nature are all Franchiſes; as if a man hath a Warren or *Pur-tien* in the land of another, and afterwards purchaſeth the ſame land, this unity of poſſeſſion doth not extinguiſh the Franchiſes, but he hath them in his own land: 28 H. 8. Dier 30. b. 16 Eliz. Dier 327. a. 35 H. 6. 56. a. So is it of *Waif, Stray, Wreck, Leet, &c.*

3. Alſo, though the thing be part of the profits of the land, and payable by ſuch perſon only that hath the land; yet if ſuch thing had its commencement and originall upon any perſonall reſpect, and not in reſpect of the land, and ſo the perſon only is charged, and not the land, ſuch thing ſhall not be ſubject to extinguiſhment by unity of poſſeſſion: and of this nature are *Annuities, Diſmes, Proxies.*

1. If an *Annuity* be granted in fee by apt words to charge the Heir or Succeſſor, albeit the Heir or Succeſſor ſhall not be charged without Aſſets of the land, yet if the Grantee of the *Annuity* enter upon this land,

land, that entry neither suspends nor extinguisheth the Annuity; for the land is not charged, but the person in respect of the land; for if the land were charged it should not be an Annuity only, but a Rent-charge, and should be recovered by Distress and Avowry, which remedy the Law yields not for a meer Annuity. Also upon assignment over of such Annuity, Attornment should be necessary, which needs not upon the assignment of an Annuity, as is noted by *Taxley* 21 *H. 7. 1. b.*

This point is made more clear, 10 *E. 4. 10. a.* An Abbat brings a *Scire facias* against a Vicar upon judgement in an Annuity, being against the Vicars Predecessor. The Defendant said that the Annuity issued out of the Manor of B, and the Tythes, Oblations and Obventions of the Vicaridge, which Manor and Tythes make the Vicaridge: and that the Plaintiff had made entry upon 43 acres parcel of the Manor, and had taken the Tythes. Hereupon judgement was desired, whether he ought to have execution. And the whole Court

held that it was no plea, because that this recovery was upon a Writ of Annuity : for in the Writ of Annuity the person only is charged and not the land ; and to say that he had made entry upon that land, whereby his suit it appeared that the rent issued not out of the land, is no plea. And it is also there resolved, that in an Annuity against an Abbat upon the title of Prescription, it is no plea, That the Plaintiff had entred into parcell of the possessions of the Abbey. And in an Annuity against an Heir, though he shall not be charged if he hold not by Descent, yet 'tis no plea to say that the Plaintiff had entred into the land descending.

But 21. *H. 7.* the case is more strong. A Parson of a Church was charged with an Annuity to another Parson by Prescription. The Parsonage out of which the Annuity was payable was appropriate to the Priory of *Aliens*, which Priory being suppressed by *Ed. 3.* was granted by Parliament to *H. 5.* Afterward *E. 4.* grants the Parsonage Improprite to the Dean of *St. Stephens* against

gainst whom a Writ of Annuity is brought by the Parson that had the Annuity by prescription. And the Opinion of the Court was, That the Annuity was not extinguished by the grant of the Parsonage to H. 5. by Act of Parliament, though there be no Saving thereof, and that this Annuity is not given *inclusive* with the Rectory; for the Rectory was not charged with the Annuity, but the person of the Rector only. And albeit the payment of this Annuity might be suspended in the hands of the King, yet when the King had passed a Grant of the Parsonage, it should revive.

As to Tythes, those are part of the profits of land, and doe arise and renew from and out of land, and yet they shall not be extinct by unity of Possession, because they are originally due in a personall respect. For the ignorance and weakness of Lay persons, which needed instruction and confirmation in matter of Religion, was the originall cause of the payment of Tythes. And the Parson of a Church

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claims



claims not Tythes in respect of land, but in respect of the person of his Parishioner. And that unity of possession doth not extinguish Tythes : *Vide* 30 H. 8. Dier 43. 32 H. 8. Br. Dismes 17. And this Case of Dismes is a parallel of the Case of Proxies with which in all points it doth concur. For even as Instruction was the cause of payment of Tythes, so Visitation which was alwaies accompanied with Instruction (*Littleton ca. de Frankalmoigne 30. b.*) was the cause of Proxies: and as Tythes are now due, & payable to Lay persons who have purchased impropriate Rectories, though they give no Instruction : So Proxies are due and payable to Ordinaries out of Impropriations and Religious Houses dissolved, though their Visitation cease. And as there can be no Præscription *de non decimando*, as 'tis commonly said in our Books. So the Canon Law hath a Rule, *Quòd nulla est adversus Procuracionem Præscriptio. Instit. juris Canonici l. 2. de Censibus.* And therefore Proxies which resemble Tythes in other points, may well be compared to them in this point,

point, viz. that they shall not be subject to extinguishment by unity of Possession.

Thus have I imparted the whole Case of Proxies, which haply came into my hands after I had penned for my own private use the foregoing Treatise, which I the rather have set down at large, to the end that any party grieved at this payment might (by weighing all circumstances in the Case) either receive information for his satisfaction, or advantage (if there it be to be found) for his ease. And having thus farre forth travelled in the business, I leave both my self and my labour in this particular to the charitable censure of the discreet and courteous Reader. For my part I hope there is no man suspects me partiall, nor shall find me so: this knowing age will soon discover such a fault, and being found not suffer it to pass without touch of reprehension. To be *inexcusatis*, equally ballanced, inclining neither to this or that hand, but with my uttermost endeavour to press, and facilitate the way towards Truth and Peace, was the

the resolution I brought with me when first I settled upon this argument. I say Truth and Peace were before mine eyes as my principall objects; which if I be not so happy as to find, it will excuse that I have cordially sought. To speak it in a word; what I could gather up at the shoars and shallowes (*Littus enim legi*, not adventuring to launch into the Ocean) I have faithfully to my power communicated concerning the point of *Procurations*. And now what shall I more say? τὰ ἀρχαία

concil. Nicen.  
can. 6.

ἢ δι' ἡμετέρας, let not any private spirit (by overmuch curiosity and study of Innovation) causelessly goe about to move things well settled out of their ancient places, nor (without evident inconvenience discovered, and judged by the eye of authority) so much as think of the word *Alteration*, but let ancient Customes stand. The wisdome of all times giving us to understand (from the nature of man so prone-ly addicted to change) of what evil consequence such attempt may fall out to be by the difficulty \* that is found oftentimes

\* Πάσις γὰρ ὁ  
ἀνὴρ φύσει καὶ  
παυρολόγος ἔστι  
ἐπὶ χάριτος αὐτοῦ  
ἔσται δυσπαλὴς  
ἔ. c. Pindar.  
Pyth. Od. 4.  
p. 112.

to

to follow in the resetting of things (hastily and inconsiderately disturbed) in their former station and place. But I have done with this point, and do now descend to enquire after another Ecclesiasticall payment, namely Synodals.

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I

De

## De Synodalibus.

**A**S much as I have here taken upon me to treat of this *Synodal* due, I think it not incongruous to say (however little yet) something of the Synod it self, because at that time it was usually paid. Now of Synods there are found sundry kinds, *Oecumenical*, *National*, *Provincial*, and *Diocesan* : *Oecumenicall* is a Synod out of divers Nations ; *National* out of divers Provinces ; *Provincial* out of divers Diocess ; *Diocesan* out of one Diocess only. The *Oecumenical* and *National* Synods were ever assembled by authority Imperial, Regal, or Papal. The *Provincial* by Metropolitans or Patriarchs ; The *Diocesan* by the Bishop of the Diocess



ces. I recite them briefly, for to make a long Narration or Story of the manner of assembling, order of session, and form of proceeding observed in each particular Synod were to trifle out the time, and to waste Paper, yea overmuch to trespass upon the patience (as I fear I have already done) of the judicious Reader, especially in this place, where the discourse upon that subject can be little else then a *το μυστηριον*, a work by the by, as we vulgarly say.

Duarenus will briefly satisfie such as desire *Duarenus.* information in the point of Synods, unto whom (*l. 1. c. 11.* of his book *de sacris Ecclesie ministeriis & beneficiis*) I referre them. This only I would intimate, and I will doe but little more then so (reserving a few words for Diocesan Synods only) how carefull and how circumspect religious Emperors and godly Bishops in former times have been, by the often assembling of Synods and calling of Councils (the frequent celebration whereof as it was *præcipua agri dominici cultura*, as the Council of *Basil* expresseth it: So the neg-

*Consl. Basil. Sin.  
to. 4. sess. 15.*

*Nevil. Const.*  
123. ca. 10.

*Concil. Chalced.*  
can. 18.

*Concil. Antioch.*  
c. 20.  
*Concil. Nicen.*  
c. 5.

*Canon. Apostolo-  
rum, ca. 38.*

*c. de Concil. 18.*  
*D. Anst. & c.*  
*propter ibi, &*  
*c. habeatur.*  
*ead.*

lest thereof was found to be very much disadvantageous to it, as the Emperor long before that Council in his *Novel-  
(Constitutions* seems to complain) to prevent as well the overspreading poyson of Here-  
sy wherewith the field of the Church was in those times much infested; as also to allay (as much as in them lay) such tem-  
pests of contention as were oftentimes stir-  
red up by seditious and factious spirits to disturb the Common peace. The famous  
Oecumenical Council of *Chalcedon*, in the  
time of *Martian* and *Valentinian* Emperors,  
graced with an Assembly of 630 Bishops,  
and before that a Council at *Antioch*, and  
before them both the Council of *Nice*  
(all cited in the volume of the Decrees)  
made severall Acts, That a Synod of Com-  
provincial Bishops should be celebrated  
in every Province twice a year (*ἑκάστοτε*  
say the Apostles Canons too) and once of  
that twice (as the *Nicene* Council hath it,  
differing in point of time from that of *Antioch*) *ante dies quadragesimæ*; yielding this  
for the reason, *ἵνα πᾶσι τοῖς ἐκκλησιαστικαῖς καὶ λαϊκοῖς*

*ἐκκλησιαστικαῖς*

καὶ τὸν προσφέρει τῷ Θεῷ, that all grudge and malice taken away, both Priest and People might offer an holy gift, and perform a pure Fast to God. But this being found in progress of time a task and travell too hard for Bishops (being for the most part old men) to continue, especially where their Provinces were of large extent (to instance Germany amongst the rest) the cause also of such frequent meetings being lessened, time saw an end of that custome; for neer about the middle of the 5. Century, at what time *Justinian's* Novel Constitutions were first published & sent abroad. The Emperor finding a neglect of the observation of the double yearly Synod, commands thus (which the rather I set down in the very words of the Constitution out of the Greek originall, for that I cannot find it in any Latin copy, *Gothofred* or else) *Ἐπεὶ δὲ τὸ τοῖς Καθολικοῖς ἐπιμελεῖσθαι τῶν Συνόδων τῶν ἀγιωτάτων Ἐπισκόπων τῶν ἐφελύσσοντων ἐκείνων ἐπαρχίαν γίνεσθαι μετὰ τῷ νῦν μὴ παρὶς ὑλάρχῃ τῶν ἀναγκασμάτων ἐστὶν ἐπανορθώσαι.* *Novel. Justin. Constitut. 113. c. 10. impress. Parisiis 1542.*  
 Οἱ μὲν ἄγιοι Ἀπόστολοι καὶ οἱ Πατέρες ὡρίσαν δυνάμειν ἕως ἐκείνου γίνεσθαι Συνόδους, ὧς ἡμῖς ὁ ἑκάστης ἐκ τῆς τοιαύτης ἀμελείας ὡς πολλοὶ δια-

ἴσμεν, fortasse. φέρει ἀναρτήματα περιεβλήθησαν: Κόμισαν δὲ πᾶν τὸν λαόν

*Cunctos populos ad hoc in eadem synagoga, &c.* which constitution of the Emperor (receiving further strength by the sixth General Synod, held at Constantinople about the latter end of the sixth Century: as also by the seventh General Synod celebrated at Nice about the latter end of the seventh Century: and long after by the Councell of Lateran under Innocent the third, Anno 1215.) continued the course of a single (not interdicting or interrupting (in places where it was used) the custome of a double) annual Provinciall Synod for divers hundreds of years within the Empire. But, *Quid manet ex antiquis moribus* (St. Austin thus breaks forth) *quibus Ennius dixit rem stare Romanam, quos ita oblivione obsoletos videmus ut non modo non colantur, sed etiam ignorentur?* So here, this Custom though never so good, and so long continued, hath long since been buried, as it were, in oblivion, and so worn out of common use, as that it is now as a thing unknown (*quæ reliquæ? quodve vestigium?* as the Historian of the *Veientes*) and as if it had

Concil. constantinop. ca. 8.  
Concil. Nicenum ca. 6.  
Concil. Lateran. ca. 6.

August. de Civit. Dei. l. 2. c. 21.

Flor. l. 1. c. 11.

had never been. And yet not so as that it  
 suffered utter abolishment: No, <sup>but it was</sup> a shoot from the same  
 root sprung forth, and up it came againe,  
 but somewhat altered from what it was be-  
 fore: For in the Councell of *Basil* (that  
 troublesome \* Councell) in the time of *Eu-*  
*genius* the fourth, about the year 1437. it  
 was there decreed (upon neglect, I doubt  
 not, of the annual Provincial Synod) and  
 an Act passed, that a triennial Provincial Sy-  
 nod should thenceforth be observed, which  
 if the wisdom of those times, and thence  
 downward, had thought meet to have con-  
 tinued and transmitted to posterity, it might  
 have been a means of producing many pro-  
 fitable Constitutions, that the modern and  
 after ages must be content to want and wish  
 for. But blessed be God for those we have.  
 The present times doe, and must thankfully  
 acknowledge the singular benefit they re-  
 ceive from them, which (without question)  
 would have been enlarged and augmented,  
 had there not been found cause sufficient  
 of a cessation, at least of a longer inter-  
 mittency

*Sueton. in Do-*  
*itiano.*

\* *Grantz. Sa-*  
*xon. l. 11. ca.*  
*20.*  
*Consil. Basil.*  
*sess. 15.*



mittency of time for their Synods then is limited in, or warranted by the Council A<sup>c</sup>t. For as when the prey is taken, the Huntsman ceaseth to pursue; and *hosse debellato* the Trumpet soundeth a retreat, and the Souldier returns triumphantly home. So here, the stormes of Hereticall fury which for a long time disquieted the peaceable state of the Church, being at the length well aswaged, differences and distractions about Ecclesiastical affairs composed, and all things in some good sort settled abroad. The Bishops (not called upon by their Metropolitans) repose themselves within the limits of their own Dioceses, where, according to an A<sup>c</sup>t made in the said Council of *Basil* each Bishop was to convocate his Clergie, and celebrate also a Synod in the same his Diocess at least \* once a year. In this Synod (being most usually held in the Cathedrall of every Diocess) the Bishop himself (*nisi gravis necessitate, vel canonico impedimento detentus*, in which case some other by delegation from him) sate President; who being there sate, and having his

\* C. annis singulis 18. Distinct.  
Abb. in c. consequent. de officio Ordinarii.  
C. Episcopus 18. Distinct.  
Concil. Basil. Sess. 15.

his assembled Clergie about him, with  
 such other of the Laity whom necessary  
 cause called thither; after earnest invoca-  
 tion for the assistance and direction of  
 Gods Spirit, and the further accomplish-  
 ment of such accustomed rites as were ne-  
 cessarily requisite and preparative to the  
 business. The Bishop or his Substitute,  
 selected or called forth *septem à plebe*, saith  
 the Decree, *de qualibet parochia*, adds the  
 Glosse; *Men grave, and of ripe years, fearing  
 God, and for honesty such as were of best repute  
 amongst the people.* To each of these men  
 the Præsident of the Synod delivered an  
 Oath, the form whereof was as follow-  
 eth, *viz. Amodò in antea quicquid nosti aut au-  
 disti aut postmodùm inquisiturus es quod contra  
 Dei voluntatem & rectam Christianitatem in  
 Parochia factum sit, aut futurum erit, si in die-  
 bus tuis evenerit, tantùm ut ad tuam cognitionem  
 quocunq; modo perveniat. Si scis, aut tibi fuerit  
 indicatum Synodalem causam esse & ad ministeri-  
 um Episcopi pertinere; quòd tu nec propter amo-  
 rem nec propter timorem, nec propter prætium, nec  
 propter parentelam ullatenus celes Episcopum aut*  
 K *ejus*

C. Episcopus in  
 Synodo 35. q. 6.

Constit. Basiliens.  
Sessio 15.

ejus missum cui hoc i-quirere jussu. it quandom-  
que te ex hoc interrogaverit. Sic te Deus adjuvet,  
& iste Sanctorum reliquie. By virtue of  
which oath, and office thereupon depend-  
ing, the extent of their authority and en-  
quiry stretcht very far, namely into all busi-  
nesses cognizable, & punishable by juris-  
diction Ecclesiastical, viz. Simony, Heresie,  
Usury, Sacriledg, Sorcery, Divination, En-  
chantments, Superstition, Alienation of  
Church Livings, Fornication, and many  
other things besides. All which, and what-  
soever else they found to fall within the  
compass of their inquisition (as cause re-  
quired) those seven men, called in the  
Law *Testes Synodales* presented either in  
writing, or otherwise interrogated in the  
open Synod, delivered by way of infor-  
mation *viva voce* to the Bishop or his Sub-  
stitute, which was received by Notaries  
then present appointed for that purpose;  
that accordingly things amiss might be re-  
duced to reformation, and amended, the  
parties found remiss might be stirred up  
to better performances, and the persons  
peccant

peccant in any sort condignly punished. And so surely they were : For albeit on the one hand there was tenderness used towards sinne secretly acted , especially where scandall might probably fasten it self upon some eminent calling ; and so a secret & gentle animadversion (*μυστικὴ ἐκείνου* as the Orator expresth it) out of the wisdom of the Synodicall Magistrate, was answerably inflicted upon the offending party (yea for smaller misdemeanors, and the first a pecuniary punishment was in favour imposed) yet on the other hand, when a fault committed became so manifest, that a connivance or private satisfaction might cause a publick offence, then no intercession ; no *pecunia ob delicta*, as Tacitus in another case could exempt from censure and shame ; but as the offence was manifest, so should the punishment be as notorious : be the person high or low his calling could not quit him free ; which if he refused to undergo being a Clerk, he was turned out of his Ministry, and deprived of his Benefice ;

*Isocrat. Orat.*  
2. ad Nicoc. p.  
18.

*Spetman. Concil.*  
3. p. 362.

*Tacit. annal.*  
4. 14. p. 314.

*Antiquit. Britan.* p. 197.  
*Extr. de Officio*  
*Jud. Ordinarii*  
*c. l. refragab.*  
*§. finali.*

If a Laick, he was thrust out of the Church by Excommunication, and debarred of Christian society, no man suffered to keep him company. This was in effect (so I take it) the manner of holding of Synods in particular Dioceses, at least a representation of some part of the form of proceedings and censures therein. At which meeting I doubt not to say there was a *Synodale*, a Cense, or Tribute in money payd to the Bishop, or to some other to his use from the inferiour Clergie.

Now *Synodale* among writers is found (if I mistake not) to yield more especially a twofold signification: For it signifieth not only *Convventus* a meeting, as *Synodus* doth, but likewise the Acts of that meeting. Concerning the former signification we have an instance out of an Epistle of Gregory the Third, cited by Cardinal Baronius in the 8. Tome of his Annals about the year 738. *Catholica* (saith he, writing to the Bishops of the Provinces of *Bajory* and *Almany*) *Sanctorum Patrum autoritas jubet ut his in anno pro salute populi Christiani seu exhortatione*



*tatione adoptionis filiorum Synodalia debent celebrari, &c.* Here *Synodale* is taken for the Meeting or Synod it self.

Touching the latter acceptation, I find it in the Tripartite History, where mention is made of a Synod of Bishops assembled at *Antioch* out of divers Provinces concerning the Heresie broached by *Aca-  
sius*, and upheld by him and his adherents against the consubstantiality of the Sonne of God. Which point being there disputed by the Bishops Orthodox & Hereticall, it was at length discussed, and this *Aca-  
sius* with his Associates being thoroughly convinced with the evidence of truth *con-  
substantialitatem professi sunt*, saith the Story, they were constrained to give glory to God by the acknowledgement of their errors, and in subscribing to the Orthodox Tenets and Creed of the Church : which done the Bishops of that Synod sent the same Profession together with a copy of the *Nicene* Creed to *Jovinian* the Emperor, to the end the said Emperor might have knowledge of their proceeding with this

*Hi. stor. Tripar-  
tit. l. 7. fol. 452.*

*Acaſius*, and be made acquainted with the uniformity of his and his adherents belief touching that Creed. *Hunc libellum* (ſaith that Synod, meaning the *Nicene Creed*) *in collectione Synodaliſum Sabini conſcriptum invenimus*. In this place I take *Synodalia* to mean the Acts of that Synod which were collected and digeſted by this *Sabinus*, as a little before in that Story the Reader may find written. So now here is *Synodale*, the Meeting, and *Synodalia* too, the Acts of the Meeting. But what's all this (will ſome ſay) to *Synodale*, the payment being the very thing principally in purſuit of inquiſition in this place? To which I answer, that I have found yet another *Synodale*, which (as I conceive) will come neer to our purpoſe, yea and muſt neceſſarily be taken for this very payment that now we are upon.

In the Appendix to the 3. General *Late-ran* Council, and in the ſecond part of that Appendix there is an Epistle of Pope *Alexander* the 3. to certain Archdeacons and Deans, reproving them for extorting of  
moneys

*Hiſtor. Tripar-  
tit. l. 5. p. 392.*

moneys from the Clergy *sub diversis nominibus* in a fraudulent kind of way. *Et huiusmodi exactionem* (saith the Pope in that Epistle) *ut eam liberius videamini exigere, quandoque consuetudinem Episcopalem, quandoque Synodalia, quandoque Denarios Paschales appellantes.* The Archdeacons and Deans the rather as it should seem to obtain their unjust demands, shrowded them under such specious Titles of dues as they knew were currantly warrantable, and would not be denied. This I take the sense to be. And admit it comes not off so clear but that some dregs of prejudice in respect of the Exactors, might in some sort obscure the equity of this *Synodal* demand: yet this I hold to be a clear truth, that as the abuse of a thing ought not to take away or abolish a necessary or convenient use; so neither can, or ought any unjust receipt impeach or make void a just demand: For it will be granted (I suppose) that no Archdeacon or Dean hath right of claim *Jure communi Ecclesiastico* to the *Synodal* payment, but only by composition with, or  
pre-

prescription from the Bishop : so that if under colour and pretence of such right, the Archdeacon or Dean shall require *Synodalia* as a due by Law peculiar & appropriate to themselves, it may wel be accounted extortion in them, which, *bonâ fide*, by them demanded in the right of the Bishop, or in their own names and right by lawfull prescribed custome from the Bishop, would be a just demand : so that hence I conclude there is *Synodale* a payment, and that Pope *Alexanders* reprehensive Epistle (as to the equity of that due) to be in no particular repugnant or contradictory. But I will stay no longer upon this point ; let the judicious Reader examine the place and satisfie himself. I proceed.

This Synodal and Synodical due had antiently two other names whereby it was known and distinguished, which time hath now worn out from common use : The one imposed from the original cause and reason of the pay being *ob honorem Cathedralis Episcopalis*, and so termed *CATHEDRATICUM* : The other assum-

ing

ing a name from its time of payment, and is called *Synodaticum*, (both one and the same thing, excepting the nominal difference) and so are they taken in the Law, being found oftentimes to go together, *synnōis*, the one expounding the meaning of the other. Instance hereof I shall not need to insist upon in this place as a matter of principall proof, but pass it over, intending in the solution and answers to certain questions following *ex incidenti* to speak something of it. The questions are

I. *What this payment, (couched under the terms of Cathedraticum and Synodaticum) anciently was?*

II. *The reason why paid.*

III. *The time when it was first imposed?*

IV. *The time when it was usually paid?*

V. *How, and by what Law it came to be imposed upon the Church, and paid by the Clergie?*

VI. and lastly, *What relative nearness our Synodale now hath unto this antient Cathedraticum?*

To each of these questions a brief solution. I begin with the first, namely,

L

What



What this Cathedratick payment was : and to this I answer; That as well by the Acts of certain Councils before mentioned, to wit *Bracar* and *Toledo*, as by the Constitutions and Rescripts of Popes, *Cathedraticum* appears to be a cense or summe of money of two shillings payd to the Bishop by the inferiour Clergy. *Illud te volumus modis omnibus custodire ne qui Episcoporum Siciliæ de Parochiis ad se pertinentibus nomine Cathedratici amplius quam duos solidos presumant accipere.* Thus Pope *Pelagius* to *Cresconius* the Illustrious. So in a difference that fell out betwene the Bishop of *Ascisi*, (*Assisnatin.* the Decretals read, which *Ortelius* from *Leander* gathers to be *Assisi*, a Town within the confines of *Umbria* in *Italy*) and the Governour of *St. Benet* not farre from thence, about Episcopal rights. *Honorius* the third, upon complaint made unto him against the Bishop, sets down what dues and duties did of right appertain unto the Bishop from the Churches and Chappels belonging unto the said Monastery, and amongst the rest expresseth

10. q. 3. c. *Illud.*  
 Et c. placuit.  
 ibi Et c. inter  
 cetera cod. 1.

Ext. de officio  
 Judicis Ordina-  
 rii c. congre-  
 vent. Et Gloss.  
 ibid. in v. *Duos*  
*solidos.*

seth Two shillings nomine Cathedratici, which is a Pension payd to the Bishop à qualibet Ecclesiâ secundum loci consuetudinem, as Panormitan upon the Text there. Two shillings then was the usuall summe payd, but why payd, the reason is yet to render.

Abb. c. conque-  
rent. de officio  
Judicis Ordina-  
rii.

Hostiensis answers to it, and saith, that

II.

it was payd in *argumentum subjectionis* & ob honorem Cathedræ; so he: And the Council of Bracar cited in the Decree, *Placuit ut nullus Episcoporum per suas Dioceses ambulans præter honorem Cathedræ suæ, id est, Duos solidos, aliud aliquid per Ecclesias tollat.* Thus there; for the honour then of the Episcopall Chair, and in token and argument of subjection to the Bishop was this sum anciently payd: And no marvel if we rightly weigh the dignity of his person, the amplitude of his power, and the great authority that he had in former dayes: For considered first *jure ordinis*, he had the Ordination of Clerks, Consecration of Altars and Churches with such like Prerogatives. Secondly considered *respectu* \* *jurisdictionis*; and so he had the power of

Hostiens. in sum.  
de Censibus. S.  
Ex quibus, ver.  
Cathedraticum  
autem.

10. q. 3. c. Pla-  
cuit.

Ext. de Religio-  
siis Domibus c.  
Constitutos.

\* 110. q. 1. in  
casu.

*Ext. de Officio  
Judicis Ordina-  
rii c. Conque-  
rent.*

*\* 10. q. 1. in  
casu.*

*b. Hostiens. de  
censibus. §. Quis  
imponere potest.  
Duaren. de fi-  
cris Eccl. mini-  
st. iis & b. ne-  
ficiis l. 7. c. 5.*

correcting and excommunicating, yea unto him belonged Institution and Destitution of Clerks : in a word, the jurisdiction of all causes by Law appertaining *ad forum Ecclesiasticum*. Lastly considered, with respect to the power that he had *Legē Diocesana*, as he was the <sup>a</sup> Diocesan; and so he had *Jus Censuræ* & *Cathedraticum exigendi*, to leave other Priviledges unnamed, and *Jus imponendi* too, as <sup>b</sup> *Hostiensis* adds, which shews that the Bishop in time past was (to say no more) *vis pæpotas*. But *Duarenus* explains the reason of this payment a little further; for thus he writes; *Dicitur hoc jus vulgo Cathedraticum, quod Cathedra, id est, honori Episcopali debeatur. Cathedra enim in jure Pontificio pro honore, ac munere Episcopali sæpe accipitur, propterea quod olim Episcopi quorum munus proprium ac præcipuum est docere, sedent in sedio, & Cathedra docebant*. Thus he, which shall be the close of my answer to the second question. The third follows, to wit, *The time when it was first imposed*.

III. To this question I bring *Duarenus* again, whose words I will here set down. *Post-*

*quam*

quam (saith he) reditus Ecclesie. (qui antiqui-  
 tús erant communes, & ab Episcopo distribue-  
 bantur divisi erant, & singulis ministeriis at-  
 tributi: Episcopis singulis veltigal quoddam ab  
 inferioribus Ecclesiis pendi cœpium est. Hujus-  
 modi imprimis illud est quod in Synodo à singulis  
 Curionibus & inferiorum Ecclesiarum Guber-  
 natoribus exigunt. Nam duos solidos singuli  
 Episcopo dare jubentur. This is plain for the  
 time; I say plain so farre forth as it relates  
 to, and points upon an act or busines done  
 of remarkable observation. It was when the  
 Revenues of the Church came to be divi-  
 ded. (this was the Act) and allotted to se-  
 verall Ministeries, then began this *Cathe-*  
*dratick* payment to the Bishop from the be-  
 neficed Clergie within his Diocess; even  
 then saith *Duarenus*. And it may seem not  
 unlikely that this Division of the Church  
 revenues here spoken of, and the distin-  
 guishment of Paroecial bounds were in time  
 not farre asunder: which if so, the anti-  
 quity of this *Cathedratick* imposition may  
 somewhat neerly be guessed at. For as  
 touching the distinguishment of Parishes,

*Duaren. ut su-  
 pra & l. 2. c. 1.  
 fol. 53.*

Volateran. l.  
22. Anastas. Bi-  
blioth.

Baron. annal. ad  
ann 113. nu. 43  
5. 6.

it is evident in Story, that *Evaristus* the Pope, otherwise called *Anacletus Græcus*, about the year 110. entred first upon that business; *Et titulos urbis Præbyterii dædixit*, saith *Volateran*. He assigned certain Houses set apart and consecrated for divine worship (wherein the Christians of these times as a distinct Congregation were wont to meet) to the Priests of the City to exercise their ministerie in; I say certain Houses, yea, and sometimes also *Delubra Gentilium*, the very Paganish Temples too were by Imperiall Edict and Destination mancipated to such religious services. But I doubt whether I may adventure the founding of this *Carbedratick* payment so high as this particular act of distinguishment by *Evaristus*; being only bounded within the City. It may be conceived rather to acquire its being by occasion of some more generall act of the same nature in the time of the Churches better rest, for now it was under persecution, and no time then for such settlements. The Church indeed was now (even in *Trajan's* time, otherwise so good an Emperor)



Emperor) in much distress, persecution being hot and pressing : And yet Christianity (such is the nature of Gods seed) was still \* growing, insomuch that the Paganish Temples in some places of the Empire were left almost unfrequented, as *Pliny* notes in an Epistle of his to *Trajan*; yea, and so great were the numbers of Christians in *Bythinia*, that, as the same *Pliny* confesseth (being *Trajan's* Lieutenant \* there) that they had well nigh spoiled the Paganus market, *Victimarium rarissimus emptor*, saith he. Persecution did nothing at all advance their cause, *in hoc quoque dolor animi dominatur*. the Gospel got ground of Paganism; and though fire and sword opposed, the people would after Christ by any means. Thus, as also by such poor Priviledges of liberty, as the Christians could obtain by Imperiall dispensations (being but few and narrowly confined for the most part) they multiplied apace. Nor yet were those Priviledges constant

\* Neque enim Civitates tantum sed vicos atque etiam agros superstitionis istius contagio perurgata est. *Plin. l. 10. Ep. 97.*

*cum Hispaniarum Praefecturam gereret* sic annotat Funecius l. 9. *Commentariorum in Chronologiam* (quasi at quum 110. Et innuit idem Author hanc Epistolam Plinianam ex Hispania fuisse scriptam. Sed Plinium Hispaniarum Praefecturam gessisse, nusquam apud probatos Autores praeter Funecium (scriptorem atque satum oculatum & peritiam) memini me legisse. Proconsulatum in Bythinia se exercuisse ex Epist. Plin. l. 10. Epist. 28. Et ejusdem vita operis sui praefixa per Caranum haud dissimile est colligere. Et inde hanc suam 97. Epistolam a Trajanum transmississe. Author est Chazaraphorum sui temporis (quos eundem vidi) facile princeps, doctissimus Sethus Calvitiu.

and

Revel. 12. 13.  
Sueton in vita  
Neron. pa 148.  
Sect. 16.

and continuing. But even as it is with the Moon, that sometime is in the Wax and sometimes in the Wane; so was it with the Church in these times; one while under Lee sheltered from the tempests of Paganish immanity, a while after exposed to the whirlewind of tyrannicall rage. What the favour of one Emperor built up, the fury of another pulled down: And thus was it with the Church from *Nero*, (in whose time Satan being enraged against the Woman, the first of the Ten bloody persecutions began) till *Constantine* the Great; during which time I seek not for the setting, nor read not of the mentioning of this Cense. Albeit I find toward the latter end of *Galienus* his reign, about the year 260. and somewhat above 40 years before *Constantine*, that the work of distinguishing Parœcial Limits was then undertaken again by *Dionysius* the Pope, who laying hold upon the opportunity of a favourable Edict of *Galienus* (affrighted, and forced to remorse toward the Christians by many prodigious tokens of Gods apparent indignation) and beginning in the City of  
Rome

Rome, where his Predecessor *Euaristus* left, he again divided, reduced, and settled what by reason of persecution lay confusedly waste, assigning to the severall Parishes, by him distinguished, severall Priests to instruct the people, and to each Church its *Cæmeterium*; yea, moreover *Parochias & Diœcesis foris distribuit quo quisque finibus limitibusq; suis contentus esset*, as *Funccius* out of the Decree hath collected. Thus proceeding with endeavor to accomplish abroad also what *Euaristus* had but only began at home: but death or other impediments preventing, that business, was left in divers places uneffected, as a work for posterity to finish and complete. To make the matter short: the work concerning the distinguishing of Parœciall bounds, being thus farre forth carried along (and all happening in the time of persecution, or rather when the Church enjoyed its *Lucida intervalla*, and had purchased some *Halcyon dayes*) *Constantine* the Great, about the beginning of the 4. Century, took upon him the Government of

M the

*Baron. annal. ad  
ann. 270. n. 17.  
lege etiam notas  
ad Sixtum tom.  
I. Concil. Bin.  
edit. pa. 10.*

*Func. Comment.  
in Chronologiam  
tuam ad annum  
Christi 168. 13.  
q. 1. c. Eccle-  
sias singulas.*

Parochiall distribution in  
England was  
performed by  
Theodorus

Archbishop of  
Canterbury, about the year  
668.

Spelm. Concil.  
152. But Speed  
saith by Honorius the 5.  
Archbishop also of  
Canterbury, about the year  
636.

the Imperiall Scepter, stayed the then  
Persecution, shut up the doores of Paganish  
Temples, and restored peace to the  
Church, and liberty to the Christians;  
yea, and Councils (few before that time)  
then began to be rise abroad. About this  
time it may be supposed that the division  
of Church revenues spoken of by *Duarenus*  
was made, and this Cense then fixed.  
Though I confesse as yet I have not observed  
it mentioned before the second  
Council of *Bracar*, held a little after the  
middle of the 5. Century, about the year  
570. which Council I find doth only li-  
mit, not constitute this payment, and  
therefore it must be sought for a little  
higher, wherein I crave the Readers pa-  
tience for a further inquisition. And so I  
pass away to the 4. Question, namely?

*When this Cense or Pension was usually paid?*

IV.

And this I find to be, as before is men-  
tioned most usually in *Synodo*; and that  
therefore it was called *Synodaticum*, quia in  
*Synodo*

*Synodo frequentius dabatur*, saith *Hoftiensis*.  
 I say it was usually but not alwayes so  
 paid : For in the Decretals there is some-  
 what that seems to oppose the limitation  
 and restriction of this payment to Synodi-  
 call Meetings only. The passage there is  
 this : There arose a question about the  
 payment of this *Synodaticum*, and after-  
 wards a Suit between a Bishop of *Spoleto*  
 in *Italy* and certain Clerks *Plebis Rypine*  
 within his Diocess : The Bishop requi-  
 red *Tres denarios Papienses*, which according  
 to an ancient Custome, the Clergy were  
 wont to pay at the Feasts of the Nativity  
 and Easter, to wit, at each Feast so much  
 pro *Synodatico*. Now the said Clerks or  
 Clergy having for thirty six years altered  
 their pay, and rendring to the Bishop and  
 his Predecessors for so long time only  
*Tres denarios Lucenses* at each Feast, being a  
 kind of money of farre less value then the  
 former) endeavoured to prescribe against  
 the Bishop, who thought himself safe e-  
 nough to avoid the danger of their Pre-  
 scription by receiving of it *sub protestatione*,

*Hoftiens in sum-  
 de censibus. S.  
 Ex quibus.*

*Extra de Censi-  
 bus c. Olim.*

g



*Quadragesimalis  
prescriptio tol-  
lit omnem actio-  
nem. Ext. de  
verb. significat.  
c. Cum inter, ver.  
per 40 annos.*

and that in so doing his right could not be impeached; wherein he had like to have been deceived. A great deal of adoe there was, and much bickering between the Bishop and his Clergy, and at length the matter was brought to Pope Innocent the Third to be decided, who examining the cause, and finding the prescription of the defendant parties to be only four years short of a full prescription, namely of forty years (to which time, if the Defendants could have brought their prescription, the Bishop had been gone notwithstanding his protestation) and having also the Defendants and their Advocates answer *non revocatum*, that *Papiensis moneta* was formerly paid; The Pope thereupon passeth a definitive sentence for the Plaintiffe Bishop against the Defendant Clergy, and condemns them *ad solutionem Denariorum Papiensium*: thus there. So that hence it is apparently evident, that albeit the Synodatick payment receive its denomination *a Synodo*, as being the usual time of its payment, yet under the same name it was also payd  
extra

*extra Synodum* (namely at the Feasts of the Nativity and Easter) I will not affirm *absque ratione Synodi*; for that before this time Synods, I mean Provincial and Diocesā afterwards I doubt not, were held (occasion requiring) twice a year, correspondent whereunto by prevalency of custome the Synodatick payment might either be doubled (which is less probable) or divided (which I rather incline to think, for so I find the ancient course to be in the Diocess of *Gloucester*) namely the payment to be divided into *Synodalia Æstivalia*, & *Hiemalia*. Nor do I think that this Synodatick payment (taken to be the same with the *Cathedratick*, as I doe here and elsewhere) was constantly at all times paid either *in Synodo*, or at the two Feasts above-named: For it was sometimes, and very anciently paid also at Visitations. I referre the Reader to the seventh Council at *Toledo* mentioned in the Decree, where he shall find a Canon against the exacting of more money then *Two shillings* only *pro Cathedratico* in Episcopall visitations.

And

*Exstat. in quodam vetustissima membranula quam penes me habeo.*

*10. q. 3. c. Inter cetera, & casus ibi.*

And so have I done with this Question, and pass to the fifth, and that is

How, and by what Law this Cathedratum came at the first to be imposed upon the Church, and paid by the Clergie?

- V. To this Question *Hosiensis* makes reply, and saith, that it was imposed *Auctoritate Episcopi*, by the authority of the Bishop, within the sphere of whose *Quondam* activity the Lawyers have found a power to move, which they call *Lex Diocesana*; a term by them invented (and because not explicitly found in any Text in Law) for the clear and distinctive expression of Episcopall power in the particular, as the same relates to other Lawes and Priviledges annexed to, and inherent in the Office of the Bishop, to wit, *Lex jurisdictionis, & Jus ordinis*. And therefore it is that *Panormitan* saith, that they are *vocabula Magistralia magis quam juris*. But to stand no longer upon the term. Thus much I find that this part of Episcopall power thus
- disting-

Gloss. per Lancelot. super Immunitate Eccles.

Abb. in ea. Dist. de Offic. Jud. Ordinar. ubi plura de lege Dioces.

distinguished and actuated by this Law, did formerly yield the Bishop a large extent of command over all the Churches and Clergy within his Dioceſſ; all, I ſay, none \* excepted but the Cisterrians, who by virtue of their order had ſome Priviledges of immunity more then ordinary, as namely to be aſſent from Synodical Meetings aſſembled by the Biſhop within his Dioceſſ, and from payments then made to him by the other Clergy with ſuch like. This then was the Law, and by virtue of this Law founded in the Biſhop (or power ſettled upon him by ſpecial donation or diſpenſation) this Cenſe was by him \* received, and the payment thereof fixed, and impoſed upon the inferior Clergy, which now is become a charge perpetuall annexed to their Benefices, and thence annually to be payd (if greater authority interrupt not the ancient courſe) as an *Onus Eccleſiaſticum* a Church burden or charge: yea, and to ſhew that it is no ſtrange and unheard of burden no innovated payment. It is ſaid to be

(beſides

\* *Gloſſ. in ve. Episcopius c. Episcopius non debet, Dist. 18. Ext. de Majorit. & obed. c. 9. Quod super & gloſſ. ibi in ver. Dioceſana.*

\* *10. qn. 1. in Caſu.*

*c. Quoniam in  
ver. Onera Ec-  
clesiastica.*

(besides its imposition by Law) *Onus Ordinarium*. The Gloss upon the Provincial Constitutions *de officio Vicarii* makes it good, where the Reader may find those words. *Solutio Cathedratici, Synodatici & Procurationum ratione visitationis, & alia hujusmodi de quibus non dubitatur quin sunt onera ordinaria suum capiunt effectum ab impositione legis*. But this place of *Lyndewoods* Glosse gives occasion to a question namely, Whether Procurations be imposed and due by the same Law that *Cathedratica* are: To which I answer, that (questionlesse) they are not.

*10. q. 1. in casu.* For *Cathedraticum, Synodaticum, tertia vel quarta pars Decimationum & Oblationum, &c.* are *Census*, and exacted or imposed as I conceive *Lege Diocesana*. But *Procuratio* is not properly *Census*, but *Pensio*. And as it is so, and reduced to a certainty of summe, that Pension hath its ground, as before intimated from Papal Constitution, and that Constitution also its root and footing from a principle in the very Law of nature. And so much *Hosiensis* is bold to assert, when speaking of *Procuratio* as it is due

*Gloss. in v. Cen-  
sus, Ext. de Cen-  
sibus, c. Probi-  
bemus.*



due ratione *visitationis*, he saith that it is  
*Adeo debita quod quamvis nullas expensas faciat* Host. ubi supra.  
S. A quibus  
danda sit.  
*Episcopus propter visitationem nihilominus eam*  
*recipit.* And the reason he urgeth is out of  
 St Paul, and St. Paul out of the Law of  
 Nature; *Qui seminat spiritualia metere debet*  
*carnalia.* Thus *Hostiensis*, who propound-  
 ing the Apostle in bare positive terms;  
 doth not so fully (as I conjecture) press  
 the duty and scope of the Text: For these  
 are the words; *If we have sown unto you spi-* 1 Cor. 9. 11.  
*rituall things, *utrum* is it a great thing if we reap*  
*your carnall?* The Interrogation seeming  
 vehemently to inforce a redition or retri-  
 bution on the one hand, especially upon  
 the performance of the conditional pro-  
 position on the other: *utrum* is as much to  
 say, Is it a great thing? No, in compari-  
 rison of the duty, the charge is not worth  
 naming. But this is an excursion, I return.  
 We see the Law, that is to say, the Law  
 Diocesane carries the authority of this Ca-  
 thedratick imposition, which therefore is  
 said to be *Episcopale*, because founded ori-  
 ginally in, or settled solely upon the Bi-  
 shop,

shop, to whom *in honorem Cathedra*, and in token of subjection and acknowledgement of superiority to him, as before is expressed, it was by the Clergie anciently rendred, and may now by him be lawfully exacted from them, as I conceive. And this is my answer to the fifth Question. The sixth and last is this.

*What relative nearness our Synodale now hath unto this ancient Cathedraticum.*

VI. To this I answer in a word, That albeit to *Cathedraticum* our *Synodale* seems to have but small or no relation, because they so much differ in literall enunciation, yet not so to *Synodaticum*; to which both in sense, signification, and literall likeness it doth very strongly referre. That being a payment of *Two shillings*; ours for the most part the same : that paid most usually at *Synodicall Meetings*, and anciently sometimes at *Visitations*; our *Synodale* (since Synods discontinued) payd at *Visitations* altogether, at least in many places

ces so. Take them then, and wynd them up in one clue or bottom, and all of them make (as I conceive) but one payment. One I say, and that very identicall one, that now is in use of receipt in this Kingdome, known and distinguished by the name *Synodale*, or the *Synodal* payment, or Rastal. iiii.  
Pensions, &c. (which is the same) the *Synody*. The *Synody* I say, which by Act of Parliament of 34 *H.* 8. is reckoned as a Church due; for the recovery whereof in case of denyall, a sufficient provision is by that Act made: And upon great reason too, for that the said *Synody*, or *Synodal* being a Pension certain, is valued in the Kings Books, and his Majesty receiveth an yearly Tenth out of it. And this is all that for the present I have to say touching this *Synodale*: In which discourse if I have erred, I humbly implore the charitable censure of the learned Reader, &

—*præbeat Alcinoi poma benignus ager.*

Let others better studied this way re-  
N 2 form,

form, or suffer with patience till time and further industry shall discover to me my mistakings, which if haply once I finde, I shall hastily retract. In the mean time I leave the point, as now it stands, and passe unto another Ecclesiasticall due, namely *Pentecostalls*.

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**De**

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## De Pentecostalibus.



**A**S he that travels in a mist, or  
 in parts unknown calls up-  
 on every one he meets with-  
 all for direction; and as he  
 that seeks passage through a  
 dark room catcheth at every hand that may  
 lead him to the light; so am I constrained  
 to doe in the disquisition and search after  
 this ancient Church-due, *Pentecostals*. For  
 the Canon Law, and Provincial Constitu-  
 tions, so much as I have read, they make  
 no mention of them under this Title. I  
 have heard some roave at them (as he in the  
 holy Story that drew his bow *in incertum*) & 1 Reg. 22. 34.  
 to say, that surely they were those *Peter-pence*  
 anciently sent to *Rome* out of this Land,

N 3

and



## De Pentecostalibus.

and continued to the Church unto this day under another name, and I know not what. But *Peter-pence* they cannot be; for if we examine the antiquity of the one and the other of them, so farre as I can discern, we shall finde a great deal of difference between them. It is certain (for ought that ever I have read or heard to the contrary) that untill the time of *Ina*, King of the West-Saxons, who lived about nine hundred years agoe, *Peter-pence* were never heard of in this Land; but our *Pentecostal* (if I may have liberty to conjecture) was in use some hundred years before that time. Again, if we consider the manner of their collection and payment, it was (saith *Polydor Virgil*, who was Collector of them in this Kingdome) *domesticatum*, from every house a penny; I say, every house that had but five groats worth of living Cattel, of one manner of Cattel; as *Stow*: But 30. *denariatus vixit pecunie in domo sua de suo proprio*, belonging unto it, as by (the Laws of King *Edward* before the Conquest) may appear. In our *Pentecostal* no such matter.

Lastly

*Polyd. Virgil.*  
*A. g. Hist. l. 4.*  
*p. 89. & 90.*

*Polyd. ubi supra*  
*p. 90.*

*Stow in annal.*  
*Edward. 3.*

*Lambard. Ar-*  
*chaion. in leg.*  
*Edw. Regis fol.*  
*128.*

Lastly (if I may not be thought *nugas agere*) there is yet another difference, and that is in the time of payment: for *Peter-pence* were usually payd either at the Feast of the Apostles *Peter and Paul*, or *ad festivitatem qua dicitur ad vincula*, commonly called *Lammas* day. *Pentecostals* seem to be paid upon, or about the time that doth chiefly denominate the pay, namely *Pentecost*. But that they have no relation the one to the other; yea, that *Peter-pence* are not *in rerum natura* at this time, it is evident: For that by a Statute made in the 25 of *H. 8.* and revived upon a Repeal 1 *Eliz. 1.* those *Peter-pence* amongst other Papall exactions had their doom, and suffered deserved extinction by Act of Parliament. Deserved, I say, albeit the Cardinal is pleased over-hastily, and thanks be to God, as untruly to collect, that a judgement fell upon this Land, when first it fell off from *Romescot* pay. *Mirandum illud accidit ubi cessavit pendi* \* *veſtigal iſtud utcumque male redemptum Heresum alluvione Anglicana Ecclesia absorbetur*, saith the Cardinal. But to leave

*Lege Polyd. ubi supra.*

*Baron annual. ad ann. Cbr. 740.*

\* No *Veſtigal*, but *Eleemoſyna* mera. *Elieus. ad Bellarm. Apolog. respons. p. 83.*

excursi-

excursions, and to come home unto our business, this *Pentecostal* payment seems (to me it doth) to be (at least in the nature thereof to have reference to) an Oblation; which amongst the Christians in the elder times of the Church was most frequent, and yielded much in matter of yearly revenue to it; devotion carrying in with a full hand what might well be spared to holy uses, and spurring on the people *ut dixerunt* (to use the Apostles phrase) even beyond their power to munificency, as conceiving the Churches Chest to be the safest Treasury. When the Tabernacle of old was to be built, see, the people came on to the work with such zeal, that *Moses* was fain to proclaim a *Sufficit*, before the people would leave off to offer. So in the Acts of the Apostles we find what the Christians in those times did, they even sold their possessions, and left them at the Apostles feet. And the manner in succeeding times of the ancient Christians also was, they offered not the price, but even their Fields and Farms *Matricibus Ecclesiis*, from whence they only

2 Cor. 8. 3.

Exod. 36. 6.

Act. 4.

12. g. 1. c. Vi-  
dentes autem.

only received livelyhood, and left the rest to be imployed to sacred uses. To Monasteries & \* Churches nothing was thought too much, nothing too good to be offered; such was the devotion of our Ancestors. And that works of mercy and charity were eternall, and that there could not be any deed more beneficiall to the soul, more meritorious, then bounty to the Church; this was their perswasion. So that as all rivers hasten into the Sea, as the Wise-man speaks, so all went to the Church; yea there seemed to be a kind of pious contention in the people (*Certatim Ecclesie populus offerebat*, as *Duarenus*) who should be first to bring in their offerings to this sacred *Gazophylacium*: even Kings and the Great-ones of the world, not only the common people brought in liberally this way. Of *Ethelwulphus* King of the West-Saxons it is thus written, that he gave the Tenth of his Kingdome free from all tributary charge to the Church. And how liberall his Successors divers of them were, till the exorbitant excess, and

O inordi.

\* Et nimio plus obtulerunt. Majores nostri nec ullum sibi modum statuerunt vel finem Monasteria donis accumulandi. *Elisens. ad Apolog. respons.*

*Eccles. 1.*

*Duaren. de sacris Eccl. ministeriis & Benef. l. 2. c. 1.*

*Antiquit. B. ii. pa. 73.*

Inordinate luxurious living of the Monks in this Kingdome, accompanied with the extreme neglect of Religion, did abate the edge of their devotion, may be seen, as in an Oration that King Edgar delivered

Antiquit. Bri-  
tan. p. 86.

Mecum obsecro animadverſat hic Lector ſi vult ſe-  
quentia apertius intelligere, cuius devotionis ac regula-  
ris obſervantie ſervavit ab antiquo Wincheſcumbienſes  
Monachi, quando ob eorum vite ſanctitatem, integri-  
tatemque quotquot ſere in civilitate hoſpiti rupi manebant,  
aliquam portionem de ſuis frugibus & terræmaſcentiis  
ſibi à Deo conceſſis Eccleſiæ noſtræ quotannis in Elee-  
moſynam offerendum vorarunt. Perſon quorum in tu-  
riâ tantæ devotionis Ceuſus ſive redditus primò ne-  
leſus ſit, aut eum illud redierunt, ſeu amplius non ſorbe-  
runt, haud uſpiti mihi conſtat, & potuit, Abſit ut ſave, quod  
poſtquam incapere ſervit religionis atque devotionis a-  
pud ipſos Wincheſcumbienſes torpere atque refrigerare  
eum acciderit (ut res) tempo e Willielmi de Shæurburnia,  
& Roberti de Upwella, oſm noſtri loci abbatis, & poſt  
etiam erga eos aliorum Chriſtianiſmum devotio. Idem  
igitur res ob illud ſanctiſimi ut poſteris videant quan-  
tùm dammum & ſacrilegium recum juſto Dei iudicio re-  
tus noſtris temporalibus tunc paſſi fuerint quidno incipi-  
mus remiſſiores eſſe erga ſacram obſervantiam regula-  
rem. Simulque & nobis timendum de majora mala ſint  
ſutura ſi (quod abſit) in hanc emiſſionem aliquam rec-  
daverimus. Eam quoque ob rem ſentio, ita vivendum ita  
elabo andum ut non ſignationis ſpitiu edicepro, ob vi-  
te iſorum Wincheſcumbienſium ſanctitatem & ſa-  
cræ apud eos obſervantiam regularem eorum predia ac  
poſſeſſiones oblatione que augeri poſſunt quam diminui  
de cætero mereantur. Que autem erat illa Oblatio ſeu  
Elemoſyna le Church-ſeal olim nuncupata ſequens li-  
tera deſcribitur, &c. — Lieket boke of Winchouh  
fol. 43.

in much paſſion &  
grief for ſuch abu-  
ſes to Dunſtan then  
Archbiſhop of Can-  
terbury; ſo alſo by  
a digreſſive ani-  
madverſion that I  
find in an ancient  
Manuſcript con-  
taining the Anti-  
quities of the Mo-  
naſtery of Winch-  
combe, and the prin-  
cipall Occurrents  
and Acts of that  
Abby for divers  
hundred of years,  
wherin the ſtate of

the Abby is much deplored in reſpect of  
the irregularity of the Regulars there. This



at home; and to look a little abroad, it is recorded of Charles the Great, that he offered whole Saxony, that he subdued, to St. Peter at Rome, and twelve hundred pounds yearly he brought in elsewhere *ad servitium Apostolica sedis*, besides what he bequeathed at his death to the Metropolitan Bishops for Church and Poor, being two parts of his goods, if *Registrum Chronicon*, report truth. And what Licinia, a very rich and wealthy Matron in the Primitive time did, the Tripartite Story tells us, that she gave all her goods to the Church of Rome. This in foreign parts, and to go no further. Now all these Oblations the Bishops after the Apostles times had *sub clave potestatis* to dispose of, they being thought the fittest instruments to be intrusted with the goods of the Church, to whom the charge of the souls of Gods people was chiefly committed. And into four parts of Canonically portions they commonly were (by Deacons first under the Bishop in imitation of Apostolical institution, and afterwards by a Clergie

Baron annal. ad  
ann. Chr. 804.

Registr. Chroni-  
conum in vie.  
Caroli magni

Histor. Tripar-  
tit. l. 1. c. 9.

Can. Apostol. ca.  
40. c. 2. 41.  
11. q. 1. c. 14.  
denies c. 6.  
Præcipimus. Es  
c. Episcopos. c.  
q. 1. c. 10.  
Quæcunque res.  
Can. Apostol. ca.  
40.  
Heda Eccl. Hist.  
Angl. l. 1. c. 27.



\* Distinct. 29.  
c. quia in quibusdam.

16 q. 7. c. Quoniam in & c. In nova. E. Concil. Chalced. ca. 26.

\* Αὐτὸ τοῦτο ἐστὶν  
Ἰδοὺ τὸ πνεῦμα  
mr. A. i. llo b.  
Schol in Pl. t.

Hi sunt Tb. sa-  
vi Ecclesie, &  
verē Tb. sa-  
vi in quibus Chri-

stus est, in quibus  
Christi fides est.

Dist. 3. Lau-  
rentii Martyris  
de pauperibus  
ex Ambros. l. 1.

Offic. c. 23. Di-  
stinct. 82. in  
Princip. & Epif-  
copus.

Duareu. l. 2. c.  
1. de sacris Ec-  
cles. ministeriis

& benef. 12 q. 6.  
1. Precipimus.

& Gloss. in ver.  
Terminus 10. q.

3. c. moio.

10. q. 1. c. De  
his & c. Anti-  
quos Canonis.

Steward, called in the Law \* *Oeconomus* al-  
wayes accomptable to the Bishop) divi-  
ded, and accordingly distributed one part  
to the Priest or Clerks that did service in  
the Church to which their offerings were  
brought. A second part to the <sup>b</sup> Poor,  
who were in the Primitive times called  
the Churches Treasure, and of whom the  
Bishops had an especiall charge and re-  
gard. A third towards the Fabrick or  
repair of the Church. And the fourth and  
last part the Bishop did usually assume  
unto himself *hospitatatis exercenda causā*,  
and sometimes a third part too, which  
when he took, he also undertook the re-  
pair of the Church, \* *Onus fabrica*; so the  
Gloss, which otherwisc rested upon the  
Priest or Clerks of that Church to do from  
the allotted dividend. By this means, I  
mean of munificent offerings, and from  
Altaragies, that is, offerings made upon the  
Altar (whereof the Bishop had sometimes  
a third part, and sometimes a moiety) as  
likewise from Oblations brought unto the  
Sepulchres and Shrines of Martyrs, with

such

such like in-comes; the Church doubt-  
 less became at length wonderfully enrich-  
 ed; for even the vessels that they used in  
 their Temples in ancient and aftertimes,  
 being in great abundance (besides orna-  
 ments, wherewithall they were plentiful-  
 ly stored) were of gold and silver: yea,  
 and it is not improbable to conjecture  
 that many goodly Temples whose curious  
 work and costly materials doe yet after so  
 many ages past give cause of admiration  
 to the beholders, were even hence raised  
 from the dust, and divers Monasteries,  
 Priories, Religious Houses and Hospitals  
 were by this means founded and plenti-  
 fully endowed. But to leave to speak too  
 much of that, that hath so long agoe for  
 the most part left the world, namely libe-  
 rall devotion towards the Church. In this  
 little *Pentecostale* there is somewhat that  
 tends that way, if the original thereof  
 could be exactly found out. In ancient  
 time the Bishop was to visit *Ecclesiastum*, as  
 before is mentioned. When he came to  
 visit, his manner was to celebrate the

*Optat. l. i. ad  
 Parmenianum.  
 Auguſt. Epist.  
 Epist. 165.*

Novel. Justinian.  
an. Constit. 123.  
c. 10.

Est. de Rapto  
ribus c. de illis.

10. q. 3. c. Quia  
Duarinus  
passim.

Antiquit. Bri-  
tan. pa. 28. et  
p. 64.

Lyndewood  
Duarinus.

Gloss. in v. Ob-  
latio de iureju-  
rancio 6. Presby-  
teri.

Masse (the other way as the Emperor phraseth it) in the Church that he visited, which he did by his Episcopall authority, every Parish within his Diocess, being *Paræchia sua*; & therefore is the whole Diocess in respect of the Bishop by the Law called *Paræchia*; as likewise the whole Kingdome (the Province at least) in respect of the Lord Archbishop of *Canterbury* is so called. At this Masse the people made an offering to the Bishop (as at other times their manner was to doe to the Curate when he said Masse on Sundayes and Holydayes) which he received. But upon this Custome I cannot fix the original of this due, forasmuch as the act of Massing *quolibet die dominico* being too generall in circumstance of time (to which our Oblation or Pentecostal hath special reference) doth not fitly denominate the pay. Now as all Offerings were usually divided into four parts, as before is declared: so the Glosse upon the Provinciaall Constitutions observes a fourfold cause or reason for which the people in ancient times

times were bound to bring their Oblations to the Church : As namely first *ex precedentis Conventionis* ; a mans house or land being tied by a preceding contract for a certain Oblation to be made at a certain time or times. Which kind of Oblation, albeit it be of the nature of a Cense or Imposition, because it proceeds *ex contractu*, yet being a thing settled upon the Church, it beareth the name of an Oblation, as generally whatsoever is offered to, or in that way settled upon the Church doth so. Secondly, *propter precedentem promissionem sive deputationem* : As when a man *inter vivos* engaged himself by promise of beneficence to a Church, or *in causa mortis*, did depute, destinate, or lay aside any moveable thing for that purpose (*stante tali voluntate unrevoked*) it ought to be performed (every man in Law being presumed \* *Durare in voluntate in qua decedit*) yea, the party or parties entrusted failing in the performance of the trust on them reposed, *tanquam egentium et pauperum neccitates* (so are they accounted) to be excommunicated.

*Ext. de verborum significat. c. Cum inter in Rubrica 12. q. 1. c. videntes lege Levitic. 27. v. 28.*

*Instit. l. 2. tit. 7. de Donat.*

\* *Gloss. in 2. c. Perdurare. ca. Majores Ext. de Baptismo. 13. q. 2. c. Qui Oblationes & c. Clerici & 18. q. 1. c. Statimus & Gloss. 161. Conc. l. 2. Turonens. c. 18.*

## De Pentecostalibus.

Gloss. in v. Vacuus distinct. 1. de Consecrat. c. Omnis Christianus.

municated: Thirdly, *propter necessitatem*, as when the Minister had not wherewith to sustain himself, the people were bound to supply. And *Bartholomæus Brixienfis* his Glosse upon the Text is, That if they refused so to doe, the Minister being poor might cut them short. *Officia divina subtrahendo*. The fourth and last is *propter consuetudinem*, according to which the faithfull were tied *certis festivitibus*, to make their accustomed Oblations. Now amongst the Festivals the Feast of Pentecost was, and worthily is a most special one. At which Feast there was even in many places here in *England* anciently an Oblation made by inferiour Churches and Parishes: to the principall mother Churches, which in probability may originally cause the denomination of *Pentecostalia* or *Whitsun-farthings* (for so also are they called) they being the issue perhaps of a devout Fast and abstinence, that about that time was by a Councel decreed to be kept; or of that great Sacrament of Baptism yearly celebrated with much solemnity



nity at this Feast, and Easter only; at what time the people brought their Children *turmatim*, by troupes as it were, unto their Baptismal Churches to be baptized, which Custome continued not only to the time of *Lotharius* the First, as *Beatus Rhenanus*, but long after, even to the time of *Lotharius* the Second (that lived about four hundred years agoe) as *Abbas Urspergensis* observes: Or rather peradventure they allude to those Oblations in the time of the Law which the Jews made at their anniversary meetings in the Temple of *Jerusalem* at this Feast. To the which Oblations they held themselves bound by that place of Scripture, *Exod. 23.*

*Non apparebis in conspectu Dei vacuus.* So then, the Temple of *Jerusalem* being the Mother Church of the Jews, to which at this Feast they brought their Offerings: And our Cathedrals being (in a special manner though not only) the Mother Churches of particular Dioceses (to which at the same time Offerings have bin anciently brought, as before is menti-

*Rhenani o'ser-  
vat. in Tertul.  
fo. 154. Abb.  
Urspergens.  
Chronicon.*

*Exod. 23. 15.  
Deut. 16. 16.*

## De Pentecostalibus.

Durand. Ratio-  
nale divinorum  
Offic. l. 4 c. 30.  
Numb. 34.

Aug de civit.  
Dei l. 6. ca. 11.  
Synes. in Epist.  
Epist. 4.

16. q. 1. c. Sta-  
tutus.

oned) this custome of Pentecostall Offerings may in some probability have its original derivation thence. And in this guess *Gulielmus Durandus* runs along thus far in agreement with me. *Ritus igitur* (saith he) *Synagoga transivit in Religionē Ecclesie, & sacrificia carnalis populi mutata sunt in observantiam populi spiritualis.* Thus he, writing about the offerings of the old Law. And surely it is not vainly conceived, the Jews might be the Authors of this Custome. Nor needs any man to be ashamed to follow their steps in so good an example, though the worst of men, *Gens sceleratissima*, as *St. Augustine* out of *Seneca*, & *Lucian* & *Lucian* *ἀνθρωπίνων*, as *Synesius* pleaseth to stile them. But to come back to our business. To the principall Mother-Churches then, these Oblations were especially made, and being thither brought, the Bishops as before is set forth and declared, had them solely to dispose of, as whatsoever else were offered in or brought unto other Baptismal and Parochial Churches, yea and Chappels too (for in such also Oblations were

were made *consentiente Episcopo*, & not otherwise) came within the compass of his distribution. So I find that *Eugenius* the Third did by his *Diploma* or Letters Patents grant the fourth part of the offerings made upon the greater Altar of the Church of St. Peter in Rome, to the Archpriest and Canons of the same Church.

*Baron. annal.  
ad ann. Chr.  
1153.*

This of the Bishop of Rome. And that the Bishops elsewhere did or might doe the same, I see no cause to doubt, though the Pope whose power and authority in this Kingdome and elsewhere was once so great as being (forsooth) *Caput omnium Pontificum a quo illi tanquam à capite membra descendunt*, as *Durandus* overlasheth; and as having within the compass and limits of his jurisdiction above an hundred and twenty Archbishopricks, and above a thousand Bishopricks, as *Stapleton* vaunts, did *ex plenitudine potestatis* sometimes interpose, and order and dispose things in the Church according to his own will, giving to this body, or that member as he saw cause; but ever to the Clergy to whom,

*12. q. 3. c.  
Episcopus.*

*Durand. Rational.  
de ministr.  
& ordin. Eccl.  
l. 1. fol. 31.*

*Stapleton de  
Magnitud. Rom.  
Eccl. l. 1. c. 3.*

10. q. 1. c. Quia  
Sacerdotes, &  
c. Sancti. Pa-  
trum ibi.

and to those uses before expressed by the Canon Law these Offerings were and are only due, and otherwise interdicted to the Laity *sub districtione Anathematis*. And hence it may be that in some places the Deans and Præbendaries of Cathedral Churches have them. In other places Præbends are founded upon them to instance two (if credible report deceive me not) in the Cathedral Church of *Salisbury*, a greater and a lesse distinguished and known by this difference of *Major & Minor pars Altaris*. And in some Dioceses again they are settled upon the Bishop and Archdeacon, and made part of their Revenue, for which the King hath Tenths and Subsidies. An instance hereof: The Cathedrall or mother Church of *Worcester* was anciently before the dissolution a Priory; and among other Revenues belonging to the same Church it had those *Pentecostalia* or Whitsun-farthings yearly brought unto it, under the name of Oblations or spirituall profits *tempore Pentecostes*. And after the Dissolution: when King  
Henry

Henry the eighth, about the 33 year of his reign did found anew and reendow the said Church, he returned these *Pentecostalia* (after he had kept them about a year in his own hands) in expresse terms back again to the said Church, which the Dean and Prebendaries there receive unto this day (as I am informed) and appeareth due by the

\* Letters Patents. But in Gloucester it is otherwise; for there the Bishop and Archdeacon only receive them; neither can the Dean and Prebendaries that now are of the Cathedral, nor could the Abbat & Monks of that Church before them ever make just claim to

them: For before the suppression these *Pentecostals*, *inter alia*, were valued to the Archdeacon in the Kings books, as part of the revenue of the Archdeaconry, even when *Procurations* and *Synodals* were, and for ought I know to the Bishop too; but I leave that to the Record, and would here end.

\* Henricus Octavus, &c. Scias quod nos de gratia nostra specialis, ac ex certa scientia, ac meo motu nostris dedimus & concessimus Decano & Capitulo Ecclesie cathedralis Christi, & beate Mariæ Virginis Wigorn. omnes illas Oblationes & Obventiones, sive spiritualia proficua vulgariter vocat *Tithis* (un-farthings annuatim, collect. sive recepta de diversis villis in comitat. nostris Wigorn. Warwic. & Heref. infra Archidiaconatum Wigorn. & tempore Pent. cost. oblata dicto nuper Prioratui beate Mariæ Wigorn. modo dissolut. dudum spectan. & pertinent. &c. Ex Archivis Decani & Capit. Wigorn.



But as he that after a long night desires to behold the appearance of the morning Sun; so my self, not yet sufficiently satisfied with what hath been formerly produced in this obscure passage, and desirous *vel in minutioribus* to behold the brightness of truth, then which nothing can be more desireable. Upon the apprehension of some conceived light beginning to discover it self in this particular.

Euripid. in ——— 'Ελπίδες δ' ἔμπερ καὶ θεοῖσιν εἰς ἀντιπαρὸν οὐκ εἶσι  
Phœniss.

*Hope to finde gives me encouragement, and makes me yet eager to seek.* Fabianus a certain Bishop moves two questions to Pope Gelacius, which, as I conceive, doe somewhat concern our present business. The former of the two was, *Whether a Bishop might require pro Cathedratico, ultra antiquam consuetudinem?* To this the Pope answereth no, *he might not.* And the later was this, *What part of Oblations he ought to receive?* And the Pope refers him to the Custome observed in other Churches, whether a moytie or third part: Not the moyty or third

10. q. 3. c. Nec  
numerus, &  
Gloss. 161.

third part generally of all the Oblations made (that questionless is not the question in this place) but only of such as were brought in, *in die anniverſarie dedicationis* (for this ſolemnity was annual, and all upon that day, *vicarij* made holy day, as *Polydor* hath it) *vel alterius ſolemnitatis*, as the Biſhop and Founder, or Prieſt did covenant and agree at the time of the Dedication of that Church; ſo the Gloſs explains the Caſe. And ſurely this is it that *Hoſienſis* ſpecially aims at, if I miſtake not, when writing of the time of the impoſition of Church Cenſes, he thus ſaith, That their impoſition was *aut fundacionis tempore, aut donationis, aut conſecrationis, aut tempore immunitatis indultæ. His enim temporibus, vel imponitur, vel offertur* ſaith *Hoſienſis*. And probable it is, yea doubtleſs ſo it was: For as beſides the Biſhops knowledge, and conſent *præter Præſulis conſcientiam* no Church could be conſecrated within a Dioceſs (*Felix* the third having made a Conſtitution to that purpoſe about the year 484) ſo neither could any Church or Monastery be found-  
ed

*Polydor. Fing. de Invent. volumi 6. c. 8. 18 q. 2. c. Eleutherius de conſecr. Diſtinct. 1. c. Slenit. Dedicationum.*

*Hoſt. in ſumma de Cenſ. S. Si quis Cenſus.*

*16 q. 1. c. Quicunque.*

*Platin. Volaterr. l. 22. Et Polyd. Virgilius ſupra. Balenſ. de Rom. Pontif. de actis 18. q. 2. c. De Monachis.*

De Privilegiis  
c. Autoritate  
in 60.

Ext. de Religi-  
osis domibus c.  
Constitutus.

Gloss. in v. Re-  
compensationem.  
Ext. de eodem.

Ext. de Symo-  
nia c. Tanta.  
x. q. 4. c. Eccle-  
sia Concil. Bra-  
car. 4. Can. 5.  
Aug. Epist. 75.  
ad Auxantium.

ed or built in a Diocese without the concurrence of Episcopall approbation, except in places priviledged, exempted from the Bishop, and appropriated to the Pope. So that when the Bishop did yield his consent to the founding, or his pains in consecrating or dedicating any such Church, he reserved somewhat to himself and to his See *Episcopal nomine Pensionis*. Sed nec illud insolitum aut novum haberi debet, ut cum Episcopi Ecclesias piis locis ritè concesserint, aut exemptas fecerint aliquid sibi in iis pensionis nomine reservent. Not that the Bishop did stipulate or contract with any, either Founder or Priest, to receive so much in recompensationem, for such his concession, consent or pains taking any way before hand, and that he would not doe it, nisi prius aliquid ex pacto detur, vel promittatur: No, that was held abominable as down-right Simony, a sin (of any other detestable) and not only against the Decree of the Pope, but the Canon of a Provinciaall Council (such consecration had been execration, as St. Augustine somewhere.) But when the business came to be effected

effected that was pursued, then was the reservation made, it seemeth then. But here now falls in a question, *utrum in spiritualibus interveniat Pactio?* Oblations being spiritual Profits, it might be demanded, Whether they were settled at the first, where now for the most part they stick (namely in the Bishop) and are rendred and paid under the name of *Pentecostals*, by a contract yea or no? To this I answer. *Videtur quod sic.* For in the Decree I find a Chapter (to name but one) to this purpose. An Oratory was founded by the Mother of *Eleutherius*, a Bishop in the Diocese of one *Cardellus* a Bishop; at the Dedication of which Oratory there was a *Convenisse*, saith the Text, between the Foundress and the Bishop, that such a proportion the Bishop should have out of the Oblations made at such a Feast. It seemeth then that contracts of this nature might be made. But whether this *Convenisse*, this Contract ought to be before or after the Dedication may admit another question. If after. the Glossé upon

18. q. 2. c.  
*Eleutherius.*

Q

the

1. q. 4. c.  
Ecclesia.

the Chapter *Ecclesia* warranteth that post dedicationem pacisci Episcopo suggerente permittitur : so then the Bishop might after Dedication by way of pact require a Pension. But might he not before ? Yes, It is not doubted by the judicious, but affirmed that he usually did and ought to doe so, which by no means he might doe if any corruption were in this contract. But contract I cannot so fitly call it : For albeit there be a kind of *Ἀπολογία* π, a semblance or seeming shew of a contract between the Bishop and the Founder or Priest in this Act, yet in truth it cannot properly, and in strictness of Law be termed a contract. And so much the Glosse upon the Chapter *Eleutherius* doth plainly deliver in these words : *Dicas quòd hic non verè dicitur pactum quia & sine pacto tenetur Ecclesia aliquid dare Episcopo in signum subjectionis.* Thus then the Bishop did reserve a Pension at the time of the foundation or dedication of the Churches within his Diocess ; and this he might lawfully doe without any the least suspicion of corruption.



ruption. And his Episcopal authority did not only warrant him to make such reservation to himself out of the Church oblations, but to impose a Cense upon any Church under his jurisdiction to the use of the Patron thereof, if need did require. *Imo Episcopi auctoritate potest aliquid constitui Patrono*, as the Gloss above mentioned hath it. And now at length to draw to a conclusion, the sum of all is. This *Pentecostal* that I have been so long in seeking after, and is in common receipt here in *England* at this day, is nothing else (as I conceive) but the annual commemoration, continuation or repetition of an ancient payment, or pension, issuing out of the oblations brought by the people so long agoe at the time specially of the foundation or dedication of their severall Churches, or at some other solemnity, to wit, the moiety or third part of the oblations then made. The same being reserved by the Bishop, and by a contract (*seu quasi*) between him and the Founder of such Church or Priest, assigned to attend the same, settled in and upon the Episcopal

Q 2

## De Pentecostalibus.

Supra to q. 3. c.  
Nag. Bismethu.

Matth. 7. 7.

Clem. A' exand.  
49. Strom. lia-  
tem. ab initio.

Rorat. Epistol.  
l. 1. ad Numid.

Buxtorf. de a-  
br. v. 12. 13. pa.  
182.

shall see, and payable yearly at or about the Feast of Pentecost; for *Alterius solennitatis* will warrant such a conjecture. This I say is, at least I take to be the same that we now call by the name of *Pentecostals* or *Whitsun-farthings*. And so now, if truth fall out here also to be the issue, as it hath certainly been the object of these my weak endeavours, then have I that by Gods favour performed to me, that sometimes in Evangelical words was promised to a servant (whom *Clemens Abexandrinus* makes mention of) consulting the Oracle how he might please his Master Εὐχαρις εἰν ΖητήCus If thou seek thou shalt find saith the Oracle. But if misapprehension or *species recti* instead of truth, misinforming judgement hath run me into error (as it is easie for a stranger travelling in parts unknown and unfrequented sometimes to step aside, and to be out of his way) My suit to the Reader then is — *si quid novisti rectius istis* *Caudus imperti*: which if he fail to do, and my self not able to rectifie things amiss, The Jewish extremity must be my refuge, *Tishbi solvat.* An

*An Appendix to the former Discourse, setting forth the reason of printing that and post-scribing this.*

**T**He precedent Treatise that now at length presents it self to publick view, hath lain written by me for divers years, and importunity that occasioned the being that it hath could not fully effect what it willed, till an opportunity also (not expected) imposed a production. Some few years agoe I had the collection of Procurations, and such other rights and duties as have been anciently belonging unto, and are vested in the Archdeaconry of *Gloucester*, for the Archdeacon that now is there, as for many years I had before in his Predecessors time, my very

Q 3

dear

dear Friend. The harsh entertainment that I found from some of the Clergy upon the demand of Procurations for the Arch-deacon in the year of the Metropolitall visitation of the L. Arch-bishop of *Canterbury* that now is, when by Sir *Nathan. Brent* his Vicar-General he visited the Dioceses of *Gloucester*, put me forward seriously to enquire after the reason of that payment, but especially of its due in the years of Episcopal triennial visitation, which though for many years it had been yearly without intermission or interruption payd (acquittances to that purpose I have by me of above 60. years antiquity, & have seen some more ancient) yet was it then, even then vehemently oppugned. The Visitation ended & my self gotten out of the storm, I adventured with such poor faculties as I had to make triall how farre forth I could be able to give satisfaction to those that for the time to come should require a reason of the payment, and travelling a while in this study, at last I cast up the reckoning of my labour, and found  
it

it to amount to this *Qualicumq;* fit (call it what you please) that goes before. And albeit in respect of the subject matter it may fall out to displease some (I cannot avoid it) it comes so near the purse : yet as of the Fig-tree 'tis observed, that though it be very bitter (*σύνδρον πικρὸν*) produceth notwithstanding sweet fruit : so if the groundwork of this Discourse lie right (be the superstructure as it may) it will in the end doubtless prove profitable, how unpleasing, how bitter soever it may seem for the present, by forewarning those that are liable to such payments to avoid opposition that will necessitate both expense of time ; time, I say (*πολυτέλες ἀνάγκη*), a pretious and costly expense, as *Theophrastus* was wont to say) yea, and somewhat else, though farre less in value, yet of no little account (especially in these dayes) Money too ; and if so, I shall be, I hope, distastefull to none, nor (to speak in the Apostles phrase) become his enemy to whom I tell the truth. For my part I thought it sufficient (praise I seek not) to endeavor towards the

*Plutar. 5<sup>o</sup>. Sympos. Probl. 9.*

*Laertius in vita Theophrasti.*

*Galar. 4. 16.*



the way of Pacification, it was, and is my only proposed end. And however I may fall short of the scope I aimed at, yet as in all acts Civil or Religious, or whatever else, *velle*, to be willing only (where ability is wanting) amounts to a performance in acceptation; so I nothing fear the censure of the ingenuous and candid Reader whose charity receiving information, but from the rules of natural reason, hath learned him to excuse imperfections with a

*Si desunt vires tamen est laudanda voluntas.*

But I wheel too far about. The occasion of that Post-script is briefly this, to wit a certain Manuscript that is carried up and down, and passeth through many mens hands (I had only a cursory view of it, and that by chance) upon the same subject with this of mine, but directly in divers material passages opposit to it. The Author of this book is or seems to be my friend; betwixt us for three or four years last past there hath continued an intercourse

course of much familiarity, so far forth that each from other might challenge ordinary Courtesies. Now that which to me herein relisheth ill, and in him indeed seemeth *absonum*, untunable and out of square, and friendly compasse is; First, that he having had the perusal of those Papers of mine so many weeks together, till he had transcribed them, and taking advantage, belike, from the insufficiency or surmised partiality of my arguments which yet lay hidden and hurt no man) he, I say, should without provocation write, and undertake to defend upon supposition of wrong (so it is presented) such a cause as neither hath, or ever shall wittingly, and *de industriâ* be impeached by my tongue or pen, namely the cause of the Clergy. I fear not to say (because I can truly say) I know not, I thank God, to prevaricate, and hope never to be so unhappy as to learn. Secondly, and that which indeed is the All (if I may not be thought *Ἐν ἀλλοτρίῳ ἡρεσὶ πῶδα τίθεσθαι*, to meddle in a business wherein I have so little to doe,

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for

*An Appendix*

for now indeed I have not equall cause, nor like encouragement to write that formerly I had) is this, That he goeth about by this book of his to alter, yea, utterly to abolish a course of payment so long continued, by suggesting out of the Canon Law, and Provincial Constitutions, that injury is done by Archdeacons (not visiting and yet) requiring and receiving Procurations in the Episcopall years of Visitation; wherein I confess he hath done the Clergy either much good, or very bad service. If his arguments be as prevalent as the title of his book is plausible, I envy not unto him the praise of his good demerits (God forbid that error committed should be either countenanced or continued, he deserves recompence equivalent that discovers it) but if otherwise, those that are perswaded by him may haply suffer by him (by his labour I mean) how zealous soever he seemeth to be in the Clergies cause. For the man, to give him his due, he is ingenuious, and not (as Calvin said  
some-

\*Clergy grievances discussed, &c.

somewhere of *Osfander*) *futiliter*, vainly or unprofitably. No, the contrary sure, dexterous also in his employments, and of ready dispatch. But I wish in this particular, being a business of moment and importance, that more consideration had been taken before he had made it so publick, as it is, or importuned towards the Press to make it more. The *Greeks* amongst them had a Law against *ἀσεβείαν* *is'pian* in argument. *Orat. Androgit. p.380.* and that no Decree should goe forth inconsiderately. So also had the Emperor *Augustus* a Speech which he frequently used *Σπουδαίον* *apud Demosthen* implying that no determination could be unquestionably currant, that had not its settlement upon the basis or bottom of mature and deliberate counsell. Had these or such other lessons to the same purpose (whereof there are many, which the wisdom of former times hath advisedly recorded, and recommended to posterity for imitation) been seriously thought on, this hasty onset of my friend might have been forborn. Doubtless in this case he might

Tacit. l. i. Histor.

Aristoph. in Equit. Act. 2.

ὁ δὲ πρίστος ἐστὶν  
τῶν πρίστων. Aristoph. in Plut.

Extr. l. i. tit. 39.

have done better to have spared his pains, I say in this case wherein, except error certain had been found (and then, as in civil broyls and discords *facto potius quam consulto opus esset*, so down with such a mischief the faster the better, *καὶ οὕτως ταχέως* then) there was no cause of opposition (on his part none) nor cause of haste that I know. But to give my friend some little satisfaction, such as I may, (and I hope he will not prove like him in the Comedy, not perswaded though perswaded; I conceive better of him then so) thus much I must ingenuously acknowledg. That in the Canon Law and Provinciall Constitutions, from the letter of some few Texts and Glosses, such a sense, seeming at the least, as he asserts doth result; namely, that Procurations are not otherwise to be required but upon the duty of Visitation performed. As for example, *Procuraciones que ratione visitationis debentur Episcopis, &c. absque manifestâ causâ nullatenus exigantur, nisi quando personabiliter officium visitationis impendunt.* And again, *Archidiaconis districtius*



*districte inibemus ne aliquo modo Procuraciones recipiant sine causâ rationabili, nisi illo die quo personaliter visitant.* Such passages the Reader of our Laws will now and then meet withall. And from hence (doubtless) it is, and from axioms not well understood (as that of *Cessante causa cessat effectus*, and such like) that the apprehensions and concepts of many (diving no deeper into the sense and meaning of the Law then the *superficies* or bare letter, nor framing to themselves any doubt which they ought to do before they can peremptorily decide) are invaded and whirled away with error. And such I take this to be, That no Procuration can warrantably and with good conscience be demanded without the act of Visitation first performed by or in the person of him that makes such claim. But if more could not be said then this, that the Living of an Archdeacon consists of Procurations, for which he is accountable in respect of yearly payments to the King (and this is said already and seems not to satisfie) I suppose

*Provinc. Const. de officio Archid.*

*L. adigere S. Quamvis de jure Patron. c. Cum cessante extr. de appellat.*

*Gribald. de Rat. Stud. l. 1. c. 5.*

there were reason enough to plead a Custom for the payment of them in the Bishops triennial year *sine visitatione* on his part; otherwise it would fall out that the omission of an act which he is forbidden to doe, would destroy an Office which the equity of the Law will not permit to be. Let the Case be paralleld. A Mortuary is not properly and originally said to be due to an Ecclesiasticall Incumbent Parson or Vicar from any but those only of his own Parish to whom he ministrerth spiritual instruction, and hath right to their

*c. Statutum v. ut infra de Consuetud. in Gloss. But see Sir H. Spelman his judicious conjecture upon this point of Mortuaries in his Treatise de sepultura. p. 35.*

Tythes : *Lyndewoods* Glosse upon the Provinciall Constitutions, discovering the ground and reason of that payment to be this, namely, That when through ignorance, and sometimes through negligence and unjust detention of Tythes and Oblations the Parishioner was found tardy and faulty, &c. *Ideo statuit [Archiepiscopus] quod compensatione sic subtractorum secundum melius animal defuncti Ecclesie damno debuit applicari.* But all this notwithstanding, we know the prevalency of Custom to be such

such, that in some places of this Kingdome they are paid to the Incumbents of other Parishes that perform no ministeriall duties at all to the deceased party, nor living nor dying. And the Statute doth nothing at all controll the course, but makes the usage of payment only to be the Law thereof. Thus then, if the parallel come any thing near the point, if it prove bnt *argumentum a simili* that known and common axiom of *Bartolus* may be pertinent enough, which is this; *ubi militat eadem ratio, idem jus statui debet*; and that other *Rationis identitas, non patitur decisionem similitum casuum esse diversam*. But yet the mound is not made fast enough, cavill will find or make way through. Lets look back again and examine the places above quoted against this payment, where we shall find the constitutions set down in terms of qualification; *Procuraciones quas &c. sine manifesta causâ*: And what needs all this if there were not yet another right besides the reason of Visitation that inforceth this payment. But concerning this particular, having written

21 H. 8. c. 6.

L. illud, ad l. Aquil.

C. I. *distin.* 11.*Entrop.* l. 8.  
p. 119.

Dan. 6. 12.

*Diodor. Sicul.*  
l. 1.

ten something in the foregoing Treatise, I resolve, in this place to say no more. Thus much only I will intimate to my friend, because he shall wait no longer for my opinion in this point. Let the places by him urged out of the Common Law and Provincial Constitutions, and Glosses, carry with him as much strength as those Laws may be imagined to be capable of, to prove and uphold his assertion; yet as the Canonists say of the Civil Law, that where it opposeth the Canon it is not to be regarded, that must give place to this, as they say: So, if any Canon or Constitution whatsoever is with us of such force (though I will yield them their due to the full) to annihilate and overthrow National Laws or Customs; That any Popes Decree or Rescript should be like those *Edicta Pratoria*, as the Laws of the *Medes* and *Persians*, perpetual, unalterable, and irrefragable; that he should say, and all should hearken and obey, as it was said of *Isis* Queen of *Egypt*, *Quæ ego legibus statui nullus poterit solvere*: I profess it comes not within the compass

of

of my Creed, nor have I faith to believe it. Thus much I have learned, which I also believe, that such and only such Canons and Constitutions as have been allowed by general consent and custome within the Realm, and are not contrariant or repugnant to the Laws, Statutes and Customes of the Realm, nor tend to the damage or hurt of the Kings Prerogative Royal, are in force within this Realm; as the Kings Ecclesiastical Lawes of the same, and none other. Now that such Canon or Constitution Papal or Provincial that necessarily ties the receiving of Procurations to the Act & duty of Visitation only is repugnant, first to a Custome grounded and prescribed from a Record of good antiquity, and observed in divers Diocesses of this Kingdome. And secondly to an Act of Parliament almost as ancient, that warrants such a receipt without mention of any Visitation, is evident as by that which in the precedent Tractate hath been briefly intimated, so also by that which here follows, wherein both

25 H. 8. c. 19.  
1 Eliz. c. 1.

Coke de jure Regis Ecclesiastico,  
p. 32.

Record and Act are more fully delivered. The Record is this.

*Archidiaconatus Glouc.*

26 H. 8.  
Extratt. de Re-  
cord. Primitia-  
rum.

*Valet clarè in Proxis, Ce-  
nag. & Pentecostal. ibid.  
per annum ultra lx. s. so-  
lut. pro feud. Raphael  
Rawlins Collect. dict. pro-  
um, Cenag cum Pentecostal.]*

64l. 10s.

x<sup>a</sup> inde 6l. 9s.

Here is plainly set down the true worth and full value of the Archdeaconry of Gl. in Procurations, Synodals and Pentecostals, to wit 64 l. 10s. And for prevention of future cavil (as if the present opposition had been so many years agoe foreseen) it is expressed *per annum* too (for thats the matter of grievance) so much yearly worth. And what would we more to make the matter plain? He doth in my opinion little other then *Modum in scirpo*



*scirpo querere*, and consequently beat the aire, that useth means to evade a payment so apparently clear and evident. Add to all this continual perception and collection of these duties by Archdeacons, even from the time of the valuation of them in *Anno 26 H. 8.* unto this present, and tenths, as before I have said, paid out of them yearly to the Crown for all that time (I suppose there is none alive that can contradict it, *et quod non disputatur præsumitur*) such Books and Acquittances as I have seen (and I have seen some that are ancient) all testifying the same. Besides I never heard of any that stood out a suit against this payment, that upon a judicall hearing or trial ever prevailed in the principal cause and point of right, but was alwayes overthrown in the litigation, and comepelled to pay charges.

And as for the Act of Parliament, Thus much I find conducing to my purpose in *Anno 34 Hen. 8. c. 16.*

Rassal. Abridg-  
ment. Pensions.

If any person or persons being Far-  
mer or Occupier of any Manors,  
Lands, Tenements, Parsonages,  
Rectories, or other Hereditaments of  
any of the said late Monasteries or  
Ecclesiasticall houses or places, or be-  
longing to them or any of them by  
the Kings Highness gift, grant, sale,  
exchange or otherwise, out of which  
premisses any such Pensions, Porti-  
ons, Corrodies, Indemnities, Syno-  
dies or Proxies, or any other profits  
have been heretofore lawfully going  
out, answered or paid to any of the  
Archbishops, Bishops, Archdeacons,  
and other Ecclesiasticall persons a-  
bove-said, doe at any time after the  
first day of April next comming, wil-  
fully deny the payment thereof, at the  
dayes of payment heretofore accus-  
tomed of any of the said Pensions Por-  
tions, Corrodies, Indemnities, Sy-  
nodies, Proxies or any other profits,  
whereof the said Archbishops, Bi-  
shops, Archdeacons, or other Eccle-  
siastical persons were in possession at,

or Within ten years next before the time of the Dissolution of any such Monastery, or other Ecclesiastical houses or places: that then it shall be lawfull for the same Archbishops, Bishops, Archdeacons, or other Ecclesiasticall persons aforesaid, being so denied to be satisfied and paid thereof, and having right to the same thing in demand, to make such process as well against every such person and persons as shall so deny payment of the same Pensions, Portions, Corporates, Proxies, Indemnities, Synodics, or any other profits which of right ought to be paid, as is aforesaid, as against the Church or Churches charged with the same, as heretofore they have lawfully done, and as by and according to the Laws and Statutes of this Realm they may now lawfully doe for the true payments and recovery thereof. And if the party Defendant be lawfully convicted in any such suit, cause or matter, according to the Ecclesiasticall

**L**awes, then the party Plaintiff shall have and recover against the party Defendant the thing in demand, and the value thereof in damages, With his costs for his Suit, &c.

By this Act it is plain that all such payments as issued out of Parsonages, Benefices or other Hereditaments of the said late Monasteries to any Archbishop, Bishop, Archdeacon, &c. at or within ten years next before the time of the Dissolution, should be still continued and duly paid as before. Now the Procurations or Proxies were yearly due, and paid within lesse then six years before the Dissolution, appeareth plainly by the preceding Record. Therefore yet to be paid according to the fore-recited Act.

The Record hath its ground from an Act of Parliament of 26 H. 8. The suppression of Abbies follows in 31 ejusdem Regis.

But perhaps it will be objected, Why was there a Provision made by Act of Parliament for payment of these duties out of Parsonages, &c. belonging unto Monasteries, and not out of others in like

like manner in the then possession of  
spirituall Incumbents; and answer, It seems  
to me, that this *Proviso* was made by the  
clemency of the King, and the indulgen-  
cy of the Parliament to secure the rights  
of the Church to the true owners there-  
of, that haply might be passed away,  
and in hazard to be utterly lost by the  
Kings Grant to Lay-persons. And this  
to be the ground and reason of that Pro-  
vision is clearly demonstrated in the latter  
part of the same Act of 14 Hen. 8. where  
there is a course prescribed how such  
persons in such Cases should have re-  
medy, and in what Court they should  
commence suit for the recovery of their  
subtracted rights, viz. in the Court of  
Augmentation of the Revenue of the  
Kings Crown, and not elsewhere; These  
be the words of the Act whereunto I re-  
ferre the Reader. Now there needed no  
such Act or caution as before is men-  
tioned; no such *Proviso* to secure the Visi-  
tors duties from the invasion of spirituall  
Incumbents, of whose Promotions or  
Bene-

Benefices the King made no sale, nor medled withal, but left them entire, reserving to himself upon the return of the Certificate of their true value only an yearly Tenth, but with an exact deduction first of all such summe or summes of money, Procurations, or whatever else he then found them yearly charged withall: which being so allowed to the spirituall Incumbent, I conceive that those that the Lawes and Statutes of this Realm have qualified and made capable of such receipts (and such are Archbishops, Bishops, Archdeacons, &c.) may lawfully at their respective accustomed times, according to the fore-recited Act, require, and so ought to receive them, till authority shall alter the course. But to this point I hope there is enough said already.

To draw now towards a conclusion. These Reasons that I have here urged, together with those formerly mentioned, make me to think that Procurations are not payable, as my friend thinks, *Ratione*

*Bene-*

*solum-*



*solummodo visitationis*; no, but sometimes Custom hath its place, as all Canonists that I have read upon the point doe unanimously acknowledge: yea, those or such like reasons moved a very learned Civilian; Dr. Cosen, sometime Dean of the Arches, writing of the quality of rights Ecclesiastical, and how they became due amongst other things, saith, *Pensiones indemnitate Procuraciones ratione visitationis PLERUNQ. præstandæ*. He doth not say as my friend saith, that they are only so due, but *Plerunq.* so. Now what *Plerunq.* signifies is a little to be enquired after: That it comes near to the signification which corresponds to his fancy, no Grammarian I am sure will allow. *Plerunq.* is never found to carry the sense that *solummodo* doth; but that it yieldeth the same sense and signification that *interdum* doth, Civilians well know, and I acknowledge. And in so doing I render him but small advantage, and my self as little prejudice. I hold my assertion still. There is *ius consuetudinarium*, a right of Custom

D. Cosen. Polit.  
Ecclesiæ Angl.  
tab. 8.

Ulpian. l. Falsus  
ff. de Furtis.

*An appendix.*

stone by which Procurations are sometimes, and ought (as I suppose) so to be. And the sole reason of that payment dependeth not upon the A& of Visitation only, & alwaies as my friend would have it. I have done with this business. God grant that what it aims at it may effect. Peace, peace I say, either by submitting to Truth, or convincing by Truth. Amen. Amen.

Δὲν τῶ ἐν ὁμοίᾳ θεῶ.

*Let*



**L** *Et the Reader be pleased to take notice (as fit to be known) that the foregoing Discourse and Appendix were written in the time of Dr. Robinson, late Archdeacon of Gloucester deceased, and not altered in this Impression from what they then were (examined and prepared in Order to the Presse) except the mistakes in Printing, of which the most material I have here noted; others of mispointing and misaccenting, with some other literal escapes; I pray the courteous Reader to make use of his Pen to amend, or his Patience to forbear what's amiss.*

Page 7. line 4. read came. Pa. 9. l. 11. r. us. Pa. 10. l. 21. r. Lions. Pa. 19. l. 3. r. *ya*. Pa. 23. l. 16. r. *Prælatu*. Pa. 24. l. 16. r. *payment*. Pa. 26. l. 8. r. *substitut*. Pa. 26. l. 15. r. *prescripta*. Pa. 31. l. 23. r. *u*. & l. 24. r. *imputari*. Pa. 85. l. 21. r. *Parochial*; and so elsewhere. Pa. 90. l. 6. r. *rife*. Pa. 126. l. 6. r. *Nathaniel*. Pa. 128. l. 15. r. *ibid*. Pa. 132. l. 24. r. *personaliter*. Pa. 136. l. 6. r. *Canon*.

